No. 14-232

IN THE

Supreme Court of the United States

SUPREME COURT, U.S.
FILED
SEP - 4 2015
OFFICE OF THE CLERK

WESLEY W. HARRIS, *et al.*,

Appellants,

v.

ARIZONA INDEPENDENT REDISTRICTING COMMISSION, *et al.*,

Appellees.

ON APPEAL FROM THE
UNITED STATES DISTRICT COURT OF ARIZONA

JOINT APPENDIX

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STATEMENT OF JURISDICTION FILED AUGUST 25, 2014
PROBABLE JURISDICTION NOTED JUNE 30, 2015

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APPENDIX A — EXCERPTS OF DISTRICT COURT DOCKET

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Date Filed	#	Docket Text
		* * *
11/16/2012	55	* AMENDED COMPLAINT against All Defendants filed by All Plaintiffs. (Cantelme, David) *Modified to correct text on 12/3/2012* (REW). (Entered: 11/16/2012)
		* * *
12/03/2012	64	*Secretary of State Ken Bennett's* ANSWER to 55 Amended Complaint by Ken Bennett. (Forney, Michele) (Entered: 12/03/2012)
12/03/2012	65	* ANSWER to Amended Complaint re: 55 *Second Amended* by Arizona Independent Redistricting Commission, Scott D Freeman, Jose M Herrera, Colleen Mathis, Linda C McNulty, Richard Stertz. (Molinar, Jeffrey) *Modified to add document number/link on 12/4/2012* (REW).

Appendix A

Modified to correct event type on 12/4/2012 (TLJ). (Entered: 12/03/2012)

* * *

04/29/2014	230	CLERK'S JUDGMENT - Pursuant to the Court's Order filed April 29, 2014, judgment is entered in favor of defendant and against plaintiff. Plaintiff to take nothing, and complaint and action are terminated (ALS) (Entered: 04/29/2014)

* * * *

APPENDIX B — SUPPLEMENTAL EXPERT REPORT OF DR. GARY KING AND BENJAMIN SCHNEER, DATED FEBRUARY 26, 2012

Candidates of Choice Supplement to: "An Analysis of the Arizona Independent Redistricting Commission Legislative District Map"*

Gary King† Benjamin Schneer‡

February 26, 2012

---

* A web appendix to this report can be found at j.mp/az-doj.

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Appendix B

TABLES INTENTIONALLY OMITTED

Appendix B

1 Introduction

This supplement to our report on the Arizona Independent Redistricting Commission Legislative District Map discusses the candidates of choice in the benchmark legislative districts, as well as in several other legislative districts of interest. A number of documents submitted in support of the Commission's legislative district map make reference to the "candidate of choice" in a district. Here we show how we use ecological inference in an effort to determine the identities of the candidates of choice, with methodological details of the estimation procedure given in the main report. While the evidence indicates that in many cases the minority community in a district prefers a minority candidate, exceptions to this pattern often exist. An added complication is determining the candidate of choice in elections where no minority candidates are on the ballot.

Here, we analyze five state-wide races: US President 2004, Secretary of State 2006, US President 2008, Secretary of State 2010, and State Mine Inspector 2010. In four of these five races, there is a candidate who belongs to a racial minority group. The exception is the election for US President in 2004, where Democrat John Kerry faced Republican George W. Bush, neither of whom belonged to an ethnic minority group.[1] In the Arizona Secretary of State 2006 election, Democrat Israel Torres, who is Hispanic, faced Republican Jan Brewer, who does not

1. For this election and the ones that follow we do not focus on the race of third party candidates, however we do account for their vote shares in our estimation procedure.

belong to a minority group. In the US President 2008 election, Democrat Barack Obama, an African American, faced Republican John McCain, who does not belong to a minority group. In the Secretary of State 2010 election, Democrat Chris Deschene, a Native American, faced Republican Ken Bennet, who does not belong to a minority group. Finally, in the Arizona State Mine Inspector 2010 election, Democrat Manuel Cruz, who is Hispanic, faced Joe Hart, who does not belong to a minority group.

Where possible, we also include results from the Arizona State Senate 2008 election, Arizona State Senate 2010 election, and other significant local elections. In these races, the candidates vary by legislative district. In cases where an election was uncontested—a scenario that occurs relatively frequently in Arizona State Senate elections—we do not attempt to estimate the level of support among the district's minority groups because voters were given no choice.

Rather than offer any sweeping conclusions about a typical candidate of choice in the benchmark Legislative Districts, we hope that the analysis presented in this supplement can serve as a reference point for questions that might arise when examining other submitted documents.

Appendix B

2 Candidates of Choice in Benchmark Legislative Districts

This section presents a district by district analysis of candidates of choice in Arizona. The supporting tables for each district are found in the Appendix to this document.

2.1 LD 2

Native American voters, who comprise the primary minority group in benchmark LD 2, strongly preferred the Democratic candidates across all five statewide races. In fact, we estimate that in each of the statewide races the vote share for the Democratic candidate was above 75%. In the Secretary of State 2010 election, which included a Democratic candidate of Native American descent, we estimate that Native American voters voted at a rate of 92% for the Democratic candidate.

In terms of local congressional elections in benchmark LD 2, we estimate that Native American voters also strongly preferred the Democratic candidate for State Senator 2008. This election occurred between two candidates of Native American descent: Native American Democrat Albert Hale and Native American Republican Royce Jenkins. In 2010, the State Senate election was uncontested and a Democratic candidate of Native American descent was elected.

Appendix B

2.2 LD 12

LD 12 is not a benchmark district; however, we include a brief analysis of its candidates of choice because it is mentioned in other submitted documents. Hispanic voters in benchmark LD 12 slightly preferred the Democratic candidates across all five statewide races. In the US President 2004 and Secretary of State 2006 elections, we estimate that Hispanics voted for the Democratic candidate at a rate of 53%. In contrast, in the other three races we examine, we estimate that Hispanics voted for the Democratic candidate at a rate of at least 67%. Based on these results, Hispanic voters in LD 12 appear to prefer Democratic candidates.

The State Senate 2008 election is also of interest. As Table 13 demonstrates, Hispanic voters preferred the Democratic candidate Angela Cotera (who does not belong to a minority group) by a substantial margin, voting for her at a rate of 73%. However, Cotera did not win the election. The State Senate 2010 election also did not include a candidate who belonged to a minority group. As before, Hispanic voters still preferred the Democratic candidate, voting for him at a rate of 65%.

We also examine the State House 2008 election. Two candidates in this election belonged to minority groups: Hispanic Republican Steve Montenegro and Hispanic Democrat Eve Nunez. Examining House elections is problematic from the perspective of making inferences about voting behavior of minority groups because each district elects two candidates (and voters cast two

votes). In this case, we allot the population two votes in our estimation procedure; results in Table 12 are accompanied by substantial uncertainties and we present them to provide a rough estimate of minority group voting behavior. As the table illustrates, we estimate that Hispanic voters in the district preferred the Democratic Hispanic Eve Nunez compared to Republican Hispanic Steve Montenegro; we estimate that 34% of all votes cast by Hispanics were for Nunez while 16% of all votes cast by Hispanics were for Montenegro. In fact, we estimate that Hispanic voters preferred the white Democratic candidate to Montenegro.

2.3 LD 13

Hispanic voters in benchmark LD 13 strongly preferred Democratic candidates across all five statewide races. In fact, we estimate that in each of the statewide races the vote share for the Democratic candidate was above 64%. In terms of local congressional elections in benchmark LD 13, both the 2008 and 2010 State Senate elections were uncontested. In each case, a Hispanic Democrat was elected to the State Senate.

2.4 LD 14

Hispanic voters in benchmark LD 14 strongly preferred the Democratic candidates across all five statewide races. In fact, we estimate that in each of the statewide races the vote share for the Democratic candidate was above 76%. In terms of local congressional elections in benchmark LD 14, both the 2008 and 2010 State Senate elections

were uncontested. In each case, a Democratic candidate was elected to the State Senate. In 2010 the unopposed candidate, Robert Meza, was Hispanic.

2.5 LD 15

Hispanic voters in benchmark LD 15 slightly preferred Democratic candidates. In the Secretary of State 2006 election, we estimate that only 51% of Hispanic voters preferred the Democratic Candidate. In the US President 2004 election, we estimate that only 53% of Hispanic voters preferred the Democratic Candidate. These are not large enough margins to give us great confidence that the Democrat is the candidate of choice; however, in the US President 2008, Mine Inspector 2010, and Secretary of State 2010 elections, the Democratic candidate received over 60% of the vote among Hispanic voters. Thus, overall, Democrats appear to be the candidates of choice among voters in benchmark LD 15. In terms of local congressional elections in benchmark LD 15, Hispanic voters preferred (at a rate of 60%) the Democratic candidate in the 2008 State Senate election; in 2010 the State Senate election was uncontested.

2.6 LD 16

Hispanic voters in benchmark LD 16 strongly preferred the Democratic candidates across all five statewide races. In fact, we estimate that in each of the statewide races the vote share for the Democratic candidate was above 78%. In terms of local congressional elections in benchmark LD 16, Hispanic voters strongly

preferred (at a rate of 83%) the Democratic candidate (an African-American Leah Landrum) in the 2008 State Senate election; in 2010 the State Senate election was uncontested and Leah Landrum won re-election.

2.7 LD 17

LD 17 is not a benchmark district; however, we include a brief analysis of its candidates of choice because it is mentioned in other submitted documents. Hispanic voters in benchmark LD 17 preferred the Democratic candidates in three of the five five statewide races that we examined. In the US President 2004 and Secretary of State 2006 elections, we estimate that Hispanics supported the Republican candidates, neither of whom belonged to a racial minority group. However, in the other three races we examine, we estimate that Hispanics voted for the Democratic candidate at a rate of at least 57%. Based on these results, we cannot generalize about who the candidate of choice might be for Hispanic voters in the district.

We also examine State Senator elections. LD 17 is of particular interest because Hispanic Republican Jesse Hernandez ran for office in both 2004 and 2008. Interestingly, we estimate that Hernandez was not the clear candidate of choice among Hispanic voters in either 2004 or 2008. Tables 43 and 44 suggest that Hernandez received less than half of the vote share among Hispanic voters in both elections. This comes with the caveat that these estimates are particularly uncertain, as is clear from even an examination of the tomography plots displaying

the Hispanic vote for Hispanic candidate included in our web appendix.

The State Senate 2010 election did not include a minority candidate; however, we estimate that Hispanic voters still strongly preferred the Democratic candidate, as Table 45 illustrates.

2.8 LD 23

Hispanic voters in benchmark LD 23 strongly preferred the Democratic candidates across all five statewide races. In fact, we estimate that in each of the statewide races the vote share for the Democratic candidate was above 63%.

In terms of local congressional elections in benchmark LD 23, Hispanic voters strongly preferred (at a rate of 82%) the Democratic candidate in the 2008 State Senate election. This election pitted two candidates of Hispanic ethnicity against each other: the Hispanic Democrat Rebecca Rios and the Hispanic Republican Andre Campos. Nonetheless, Hispanic voters still strongly preferred the Democratic candidate. The 2010 State Senate election pitted the Hispanic Democrat Rebecca Rios against a Republican candidate who did not belong to a minority group. Hispanic voters in the district preferred the Democratic State Senate candidate (at a rate of 79%); however, this support did not prove to be enough to lead to re-election for Rios.

Appendix B

2.9 LD 24

Hispanic voters in benchmark LD 24 strongly preferred the Democratic candidates across all five statewide races. In fact, we estimate that in each of the statewide races the vote share for the Democratic candidate was above 63%.

In terms of local congressional elections in benchmark LD 24, Hispanic voters strongly preferred (at a rate of 82%) the Hispanic Democratic candidate, Amanda Aguirre, in the 2010 State Senate election; however, LD this support did not prove to enough to elect Aguirre. In 2008 the State Senate election was uncontested and Aguirre won the seat.

2.10 LD 25

Hispanic voters in benchmark LD 25 strongly preferred Democratic candidates across all five statewide races. We estimate that in each of the statewide races the vote share for the Democratic candidate was above 65%.

In terms of local congressional elections in benchmark LD 25, Hispanic voters strongly preferred (at a rate of 89%) the Democratic candidate in the 2008 State Senate election; in 2010 Hispanic voters preferred the Democratic State Senate candidate (at a rate of 89%). In 2008, the Hispanic Democrat Manuel Alvarez prevailed over a Republican candidate who did not belong to a minority group. In 2010, Alvarez lost to a Republican candidate who did not belong to a minority group.

Appendix B

2.11 LD 27

Hispanic voters in benchmark LD 27 strongly preferred the Democratic candidates across all five statewide races. In fact, we estimate that in each of the statewide races the vote share for the Democratic candidate was above 77%.

In terms of local congressional elections in benchmark LD 27, 89% of Hispanic voters cast their ballots for the Democratic State Senate candidate Jorge Luis Garcia, who is Hispanic. Garcia ran against a Republican candidate who did not belong to a minority group. In 2010, the Hispanic Democrat Oliv Cajero Bedford won the seat, which was uncontested.

2.12 LD 29

Hispanic voters in benchmark LD 29 strongly preferred the Democratic candidates across all five statewide races. In fact, we estimate that in each of the statewide races the vote share for the Democratic candidate was above 77%.

In terms of local congressional elections in benchmark LD 29, both the 2008 and 2010 State Senate elections were uncontested. In each case, the Hispanic Democrat Linda Lopez won the seat.

APPENDIX C — LETTER FROM CANTELME & BROWN, P.L.C. RE: ARIZONA CONSTITUTION'S REDISTRICTING CRITERIA

CANTELME & BROWN, P.L.C.

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Colleen Mathis, Chair
Scott Freeman, Vice Chair
Jose Herrera, Vice Chair
Linda McNulty, Member
Richard Stertz, Member
Arizona Independent Redistricting Commission
1100 W. Washington Street
Phoenix, Arizona 85007

Re: Arizona Constitution's Redistricting Criteria

Dear Chairwoman Mathis and Commission Members:

Appendix C

As you know from the July 8, 2011, IRC meeting, I represent the FAIR Trust, a group concerned with fair congressional and legislative district mapping. I write to emphasize and amplify several points I made in my remarks at the Call to the Public held at the IRC meeting of July 8, 2011.

1. **Competitiveness - The Arizona Constitution.** Competitiveness is one of the state constitutional criteria to be considered by the Commission. The question naturally arises, how does it fit into the hierarchy of the other redistricting criteria set forth in the Arizona Constitution at Art. 4, pt. 2, § 1(14)? The Arizona Supreme Court supplied the answer and explained how competitiveness fits in relation to the other goals:

> The constitution directs the Commission to favor competitiveness when doing so is practicable and will not cause "significant detriment" to the other goals. *Id.* art 4, pt. 2, § 1(14)(F) .... The direction that competitiveness should be favored unless one of two conditions occurs does not, contrary to the Commission's assertion, mean that the competitiveness goal is less mandatory than the other goals, can be ignored, or should be relegated to a secondary role. The constitutional language means what it says: The Commission should favor creating more competitive districts to the extent practicable when doing so does not cause significant detriment to the other goals.

Appendix C

Arizona Minority Coal. for Fair Redistricting v. Ariz. Indep. Redistricting Comm'n, 220 Ariz. 587, 598, ¶ 35, 208 P.3d 676, 687 (2009).

To illustrate application of the criteria, consider a hypothetical under which a redistricting commission has a duty to draw two districts in a jurisdiction in which only one city exists in a state, the city occupies the entire eastern half of the state, the unincorporated area occupies the entire western half, the population of the city is equal to that of the state outside the city, the minority population inside the city is identical to that outside the city, and the party registrations are 37% Republican, 33% independent, and 30% Democrat outside the city, and 37% Democrat, 33% independent, and 30% Republican inside the city. In this hypothetical, the commission can bisect the city and draw two districts nearly as competitive as one can ever get, both composed of party registrations of 33.5% Republican, 33.5% Democrat, and 33% independent. Yet if it were applicable, the Arizona constitution would forbid it. To achieve such competitive districts, the commission has to split the city, which would cause significant detriment to the community-of-interest and the city-boundary requirements of § 1(14)(D) and § 1(14)(E) of Art. 4, pt. 2, of the Arizona Constitution, and thereby would violate these subsections of the Constitution. Application of the Arizona criteria would mandate one district comprising the city, and one comprising the unincorporated area.

2. Competitiveness - Actual Results. A certain conventional wisdom has developed that your predecessor commission failed to develop an adequate number

of competitive districts after application of the state constitutional criteria. As is common with conventional wisdom, the facts prove it to be in error, belied by actual election results.

In the five congressional elections conducted in eight districts since the predecessor IRC 2002 congressional plan went into effect, Democrats have won 16 and Republicans have won 24 congressional seats. The first two of these elections, however, were influenced heavily by incumbency. Congressmen Flake, Hayworth, Kolbe, Pastor, and Shadegg all were incumbents, who enjoyed the natural advantages of such status. . In the last three elections, with eight seats available in each election, Democrats won 12 seats and Republicans won 12 seats. I venture to say that few if any other states can match this record for competitiveness in the last three general elections.

The 2002 election for seats in the 46th Legislature was conducted under a plan stipulated to by Republicans and Democrats, endorsed on an interim basis by three Latino witnesses deemed experts by the Court (Maricopa County Supervisor Garrido Wilcox, State Senator Rios, and State Senator Valadez), and ordered into effect by a three-judge panel of the United States District Court in *Navajo Nation v. Arizona Independent Redistricting Commission*, 230 F.Supp. 2d 998 (D.Ariz. 2002). The 2002 election produced a 17 Republican to 13 Democrat split in the Arizona Senate, and a split of 39 Republicans, 20 Democrats, and one Independent in the Arizona House of Representatives.

Appendix C

Given the imprimatur of the three-judge federal court, the stipulation to its adoption by both the Republican and Democrat sides, and the endorsement of the three minority witnesses (all three officer holders of many years of experience), it is fair to consider the court-ordered 2002 plan as a benchmark, given the constraints of the Voting-Rights Act, and Arizona demography, geography, and party registrations.

The court-ordered plan was in effect only for the 2002 election. The IRC developed a replacement plan in 2003, DOJ pre-cleared it in 2003, and it went into effect for the next four general elections. Elections taking place subsequent to the three-judge plan yielded the following results:

Election	Senate		House	
	Republican	Democrat	Republican	Democrat
2004	18	12	39	21
2006	17	13	33	27
2008	17	13	36	24
2010	21	9	40	20

These results produced an average of 37 Republicans and 23 Democrats in the House, two fewer Republicans and two more Democrats than the benchmark; and an average of 18.25 Republican members and 11.75 Democrat members in the Senate, slightly more Republicans and slightly fewer Democrats than the benchmark. Both averages, however, were skewed upwards by the 2010 results, the

product of an atypical wave election influenced by national politics and by calls from some politicians to boycott Arizona.

Even with 2010's onetime fillip to the Republicans, the election results under the IRC plan in four elections cannot be considered significantly different from what the court-ordered, stipulated, and endorsed plan yielded. What's more, these results were produced in a decade in which the percentages of party registrations declined and the numbers of independent registrations increased.

These results also billboard the fact that it is impossible in Arizona to draw a map with 30 competitive districts or even a map with ten Republican districts, ten Democrat districts, and ten competitive districts. The Voting Rights Act, the Fourteenth Amendment, and the state constitution's neutral requirements of equal population, respecting communities of interest, respecting city and county lines, compactness, and contiguity all interact to constrain the number of competitive districts that can be drawn. That is what Proposition 106 provided, and that is what the majority voted for when they passed the proposition at the 2000 election.

3. **Communities of Interest.** Mapping Consultant Strasma suggested that the Commission not adopt a definition of communities of interest, or at least not yet, and that it allow communities to self-identify and percolate up from the grass roots. I must respectfully disagree with the first part of Mr. Strasma's recommendation. Since 2002, I have argued that, to proceed fairly, evenly, and

transparently, the Commission must define communities of interest and competitiveness and apply the adopted definitions equally around the state. It will undercut the public's confidence in the Commission if it adopts an I-know-it-when-I-see-it approach, in lieu of definitions evenly applied statewide. I have always believed that a genuine criticism of your predecessor commission is its failure to have done so, even if the appellate courts did not find constitutional error therein. A less rigorous approach invites a criticism of selective enforcement, which could tar the Commission's reputation for fair and even treatment of all communities in all corners of the state.

4. Voting Rights. Arizona's history bears the indelible stain of discrimination against its Latino, Native-American, Asian-American, and African-American citizens. Within the memory of many Arizonans, African-American children were segregated in high school at Phoenix and Tucson, Latino children were relegated to the "Mexican room" at many elementary schools, and Native Americans were denied the right to vote. We take no back seat in lamenting Arizona's sad history of discrimination against her own people, yet we acknowledge that points of light peered through this darkness to guide us to a better way. We prize Justice Levi Udall's opinion for the Arizona Supreme Court in *Harrison v. Laveen*, 67 Ariz. 337, 196 P. 2d 456 (1948) striking down the refusal to allow Native Americans to vote as a landmark on the road to justice in Arizona. We also take pride in then Judge (later Chief Justice) Struckmeyer's opinion and order in *Phillips v. Phoenix Union High School and Junior College District*, No. 72909, Arizona Superior Court, Maricopa County

(Feb. 9, 1953), rejecting school segregation before the United States Supreme Court had acted.[1]

In this vein, we highly urge this Commission to strictly enforce both sections 2 and sections 5 of the Voting Rights Act. The 2010 census found the Latino population to comprise 29.5% of the state's total population. With this population percentage, section 2 requires, on the congressional side, the creation of two Latino-majority districts and one influence district. On the legislative side, it requires the creation of nine Latino-majority districts, if geography and demography permit them without running afoul of *Shaw v. Reno*, 509 U.S. 630 (1993). We further urge the Commission to determine in open hearing what level of voting-age population it will require in minority districts to ensure the rights of minorities to elect candidates of their choice. Last, we note that Congress reauthorized the Voting Rights Act in 2006, and in doing so it rejected the use of coalition or influence districts to satisfy sections 2 or 5, as had been approved in *Georgia v. Ashcroft*, 539 U.S. 461 (2003). Thus, to anyone who suggests that coalition or influence districts can be created for the sake of drawing more competitive districts, we respond that doing so violates voting rights and must be rejected. This is not what Arizona wanted when its voters passed Proposition 106. The voting rights of our minority citizens are sacred and cannot be sacrificed for other ends.

---

1. Chief Justice Struckmeyer had fought in France, was highly decorated, and knew by blood and sacrifice what freedom meant. He returned to Arizona later to hold in the cited case, "A half century of intolerance is enough."

Thank you for your attention to this matter.

Very truly yours,

CANTELME & BROWN, P.L.C.

s/_____
By: David J. Cantelme

cc. Mary O'Grady, Esq.
Joseph Kanefield, Esq.

APPENDIX D — EXPERT REPORT OF PROFESSOR BRUCE E. CAIN

Expert Report of Professor Bruce E. Cain

Wesley W. Harris et al. v. Arizona Independent Redistricting Commission, et al.

Qualifications:

I am the Charles Louis Ducommun Professor in the Humanities and Sciences and Director Designate of the Bill Lane Center for the American West, Stanford University. Currently, I am in residence for academic year 2012-13 at NYU Law School as a Fellow at the Straus Institute for the Advanced Institute for Law and Justice. I have written extensively on redistricting and voting rights, including two books (*The Reapportionment Puzzle* and *Congressional Redistricting*) and numerous articles in political science and law journals. Most recently, I authored "Redistricting Commissions: A Better Political Buffer?" 121 *The Yale Law Journal* 1808, 2012 and coauthored "Community Interest Methodology and Public Testimony," *UCI Law Review*, forthcoming.

I have served as a redistricting consultant on numerous occasions since 1981 at the local, state and federal level. This includes: the California legislature, 1981 and 1982; the Los Angeles City Council, 1986; the Attorney General of the State of Massachusetts, 1987-88; the U.S. Justice Department, 1989; Los Angeles County, 1991; the Oakland City Council, 1993; the San Diego Citizens Commission on Redistricting, 2001; the City and County of San Francisco, 2002; Special Master for three

judge panel, Arizona State Legislative Redistricting, 2002; and the Maryland Attorney General's Office, 2011. In my capacity as Special Master in Arizona, I assisted the three-judge panel in reviewing the AIRC's response to the Justice Department's Section 5 objection to Arizona's proposed new state legislative plan.

I have been an expert witness in a number of cases, including *Badham v. Eu,* 1984; *Service Employees International Union, AFL-CIO, CLC et al. v. FPCC,* 1990; *City of New York et al. v. U.S. Department of Commerce,* 1992; *Smith v. Regents of the University of California et al.,* 1995; *California Democratic Party v. Bill Jones,* 1997; *California Pro-Life Council, Inc. v. Karen Getman et al. and Bill Lockyer,* 2004; *New York State Board of Elections: Neil W. Kelleher, Carol Berman, Helena Moses Donohue, and Evelyn J. Aquila,* 2004; *Fletcher v Lamone,* 2012; and *In the Matter of the 2012 Legislative Redistricting of the State,* 2012.

I have not been deposed or testified during the last four years. My compensation is $250.00 per hour. A list of my publications in the last ten years is provided as an appendix.

For this report, I have reviewed the following documents:

1. *US Department of Justice Submission under Section 5 of the Voting Rights Act of the State Legislative Redistricting Plan by the AIRC,* February 12, 2012, including exhibits and appendices

Appendix D

2. *An Analysis of the Arizona Independent Redistricting Commission Legislative Districting Map* by Gary King and Benjamin Schneer, February 24, 2012

3. Candidates of Choice Supplement to *An Analysis of the Arizona Independent Legislative Redistricting Map*, by Gary King and Benjamin Schneer, February 26, 2012

4. Order Denying Motion to Dismiss 11/16/12

5. Plaintiff's Second Amended Complaint 11/16/12

6. Expert Report of Thomas Brooks Hofeller 12/17/12

7. Affidavit of Thomas Brooks Hofeller 6/25/12

8. Affidavit of Thomas Brooks Hofeller 9/7/12

9. Motion to Dismiss 8/3/12

10. Motion to Dismiss Exhibits 8/3/12

11. Plaintiff's First Amended Complaint 7/5/2012

12. 2011 DOJ Redistricting Guidelines, 76 Fed Reg. 7470 (Feb. 9, 2011)

13. Text of Commission's 8/23/2002 revised legislative preclearance submission

14. 76 Fed. Reg. 12369

Appendix D

15. 11/29/11 Draft report of Prof. Gary King and Ken Strasma

16. Article 4, part 2, section 1 of the Arizona Constitution

17. NCSL Congressional and State Legislative Deviation Table

18. 2012 November Election Results for AZ and breakdown of Senate and President races by legislative district

19. DOJ objection letters

Report:

1. I understand that the Plaintiffs' claim is that the Arizona Independent Redistricting Commission "systematically overpopulated Republican districts and under-populated Democratic districts for the sole purpose of maximizing Democratic Party strength in the state legislature." Court's 11/16/12 Order at 5. The purpose of this report is to review the AIRC's procedures, criteria and district rationales in order to assess whether there were valid reasons related to state and federal criteria for the observed population deviations.

2. I understand that under the federal Equal Protection Clause a state must make an honest and good faith effort to construct districts, in both houses of its legislature, as nearly of equal population as is practicable, but that mathematical precision in legislative districts is not required. Instead,

states may exercise some flexibility in constructing legislative districts as long as the divergences in population among districts are based on legitimate considerations that are incident to a rational state policy. I further understand that the deviations must result from factors that are free from any taint of arbitrariness or discrimination. Traditionally, an overall deviation within 10% has been the norm for legislative districts. Finally, I understand that the trial court has said that Plaintiffs must prove any deviation is "an arbitrary or discriminatory policy" and that Plaintiffs must prove that "the asserted unconstitutional or irrational state policy is the actual reason for the deviation."

3. The Commission is composed of five citizen-volunteers. The Commissioners hire a mapping consultant and legal counsel to assist them with the technical and legal aspects of redistricting.

4. The question at hand is not whether there is one optimal plan that completely satisfies all redistricting criteria and public demands. No such plan exists because there are inevitable tradeoffs between different criteria and interests in all proposals. A decision to put more weight on one of the criteria will often make it harder to satisfy other goals. Slightly under-populating districts can preserve communities of interest, avoid splits of local jurisdictional lines or enhance the prospects for an under-represented minority to elect a candidate of choice. Conversely, adopting a strict population rule can limit the ability to achieve goals such as these.

5. Slightly under-populating some districts logically means that others have to be slightly over-populated given that the population deviations around the ideal number have to sum to zero. Inevitably some groups or communities will consider themselves to be worse off with respect to a particular redistricting indicator. In a well-designed plan, they will not be worse off on all indicators.

6. There is also no dispute as to whether the AIRC met the well-established population standard for legislative districts. All parties agree that the total deviation of the AIRC's legislative plan is 8.8%, well within the commonly used 10% total deviation. Most of the other states also have used their population deviation discretion when adopting legislative districts this decade. The purpose of allowing state legislative population deviations within a specified range of the ideal district number as opposed to requiring exact population equality is to give the State some flexibility in line drawing options in order to accommodate other important redistricting goals. Exact mathematical population equality is not possible in any event, as there are inevitable errors in the census and the population continues to shift after the census data is collected.

7. The Arizona Constitution sets out four criteria in addition to the federal criteria such as population equality and adherence to the requirements of the Voting Rights Act. They are "to the extent practicable" geographic compactness and contiguity; respect for

communities of interest; use of visible geographic features, city, town and county boundaries, and undivided census tracts; and competitive districts if they create no significant detriment to the other goals. I understand that the Arizona Constitution establishes a four phase process for redistricting. In the first phase, the Commission creates "districts of equal population in a grid-like pattern across the state." Ariz. Const. art. IV, pt. 2, § 1(14). In the second phase, the Commission adjusts the equally populated grid map "as necessary to accommodate" six goals in the Arizona Constitution. These goals are (1) compliance with the United States Constitution and the Voting Rights Act; (2) equal population among districts to the extent practicable; (3) geographically compact and contiguous districts to the extent practicable; (4) district boundaries that respect communities of interest to the extent practicable; (5) district lines drawn using visible geographic features, city, town and county boundaries, and undivided census tracts to the extent practicable; and (6) to the extent practicable, competitive districts, where such districts would create no significant detriment to the other factors. Ariz. Const. art. IV, pt. 2, §§ 1(14)(A)-1(14)(F). The Commission must exclude "[p]arty registration and voting history data ... from the initial phase of the mapping process[,]" but may use that data to "test maps for compliance with the above goals." *Id* § 1(15). In the third phase, the Commission "advertise[s] a draft map" of the legislative districts to the public for at least thirty days to permit public comment. *Id.* § 1(16). During

the comment period, "[e]ither or both bodies of the legislature may ... make recommendations to the independent redistricting commission[,]" and those recommendations shall be considered by Commission. *Id.* In the final phase, the Commission establishes final district boundaries. I understand that places of residence of incumbents or candidates may not be identified or considered. *Id* § 1(15).

8. I considered whether meeting the Voting Rights Act Section 5 standard and the four state constitutional criteria can account for the observed population deviation pattern in the AIRC's state legislative plan. My conclusion based on the data and the record of AIRC proceedings is that the distribution of under-populated and over-populated districts can be explained by the AIRC's concern with Section 5 compliance and other state criteria.

9. In arriving at this conclusion, I looked not only at statistical evidence, but also AIRC Commissioner statements and testimony during the public meetings. Citizen commissions operate with more transparency and receive more public input than often occurs with legislative and court redistricting efforts. The AIRC went to extraordinary lengths to get public comments on their proposals at various stages of the line drawing process, including 23 public hearings in the first round and 30 more in the second round. All AIRC business meetings also provided opportunities for public comment. The Commission estimates that over 2000 people attended hearings that were streamed live by

Internet and archived for subsequent viewing. The AIRC incorporated some of the public submissions into their proposals. Specific alterations to the AIRC draft maps were documented in change orders that allow us to follow the Commission's rationale in constructing districts the way it did. The record of these proceedings clearly demonstrates the AIRC's concern about avoiding a repeat of Arizona's past difficulties in meeting Section 5 requirements and balancing other goals such as minimizing city/county splits, observing communities of interest, achieving compactness, and creating competitive districts to the extent practicable and without detriment to the other goals.

10. As a "covered jurisdiction" under the Voting Rights Act, Arizona must obtain preclearance from the U.S. Department of Justice or a judgment from the District Court for the District of Columbia before its redistricting plan can go into effect. Department of Justice guidelines (76 Fed Reg. 7470, Feb. 9, 2011) state in part that "in the Department's view, this determination requires a functional analysis of the electoral behavior within the particular jurisdiction or election district. ... [C]ensus data alone may not provide sufficient indicia of electoral behavior to make the requisite determination. Circumstances, such as differing rates of electoral participation within discrete portions of a population, may impact on the ability of voters to elect candidates of choice, even if the overall demographic data show no significant change." Therefore, a functional analysis requires additional

information about the jurisdiction's election history, voting patterns, voter registration and turnout data. This data is used to assess several factors related to Section 5 compliance: whether minority voting strength is reduced by the proposed redistricting; whether minority concentrations are fragmented among different districts; whether minorities are over-concentrated in one or more districts; whether alternative plans satisfying the jurisdiction's legitimate governmental interests exist, and whether they were considered; whether the proposed plan departs from objective redistricting criteria set by the submitting jurisdiction, ignores other relevant factors such as compactness and contiguity, or displays a configuration that inexplicably disregards available natural or artificial boundaries; and whether the plan is inconsistent with the jurisdiction's stated redistricting standards.

11. In determining the number of benchmark ability-to-elect districts, the Commission looked at election results over several previous elections, not just 2010. For example, Professor Gary King and Ken Strasma provided a memorandum to the Commission on 11/29/2011. That memo contained data relevant to the number of benchmark districts. It listed State Senate races featuring minority and nonminority candidates for 2004 to 2010. Although it did not necessarily follow that these were ability-to-elect districts for purposes of Section 5, based on those results, there were 10 districts where minorities had success in electing minority candidates of choice: benchmark Districts 2, 13 to 16, 23 to 25, 27, and 29.

12. The 2010 map is the first legislative redistricting map in Arizona to be precleared on the initial try since Arizona came under Section 5. Arizona drew objections in the 1980, 1990, and 2000 cycles. Moreover, the objection in 2000 is notable because it was not just based on retrogressive effect but also in part on discriminatory intent. These are all factors that would suggest caution when attempting to craft a plan that will achieve preclearance.

13. Arizona has 30 legislative districts. The ideal population for each using the 2010 census numbers is 213,067, which is derived by taking the state's population and dividing by 30. A deviation of plus or minus 5% (for a total deviation of 10%) would range from a high of 223,720 to a low of 202,414. The lines drawn in the previous redistricting had fallen well out of that range: the old districts varied between a high population of 378,298 (+77.5%) to a low population of 155,897 (-26.8%). The final plan adopted by the AIRC had population deviations of +4.1% to -4.7%. None of the 30 districts has the exact ideal population number. Eighteen have populations above the ideal number and twelve fall below. The average deviation is a relatively low 2.26%.

14. The National Conference of State Legislatures has collected data on State Senate legislative population deviations in the latest round of redistricting. Of the 35 states that the NCSL had data for, 3 states had total population deviations for their state senate districts at or above 10%, and 6 had total population

deviations below 1%. Twenty-six states had total deviations between 1% and 9.9%, 9 of which had total deviations between 9% and 9.9%.

15. There are several points to note about this. First, most states (29 out of 35) made use of total population variations above 1%. Second, Arizona's total variation was not among the highest; 12 had variations in excess of 9%, while Arizona's was below 9%. Third, all of the other Section 5 states in the NCSL sample created legislative maps with allowed population deviations: Texas (8.04) and Virginia (4.0) plus two other states at higher levels than Arizona, Louisiana (9.86) and South Carolina (9.55).

16. The question then is how to characterize the population deviation distribution. As with so many redistricting issues, this is more complex than it might initially seem. To begin with, determining "partisan bias" requires the classification of districts by party. To do this before there is an actual election using the new lines, the AIRC had to rely on political indicators and projections. The initial step in Arizona's redistricting process uses a grid methodology based solely on population. Political data are introduced into the process in order to do Section 5 Voting Rights analyses and to assess the competitiveness of the districts as required by the Arizona state constitution.

17. In their complaint, Plaintiffs rely on a very simple partisan measure—i.e., a party registration score. It takes the difference between Democratic and

Republic registration, and assigns a district to the party with more registrations, no matter how small the difference. This procedure works best when party registration differences are large. It becomes less reliable as the margins get smaller. Most political scientists and election handicappers take a more sophisticated approach, incorporating historical election returns as well as registration data, and developing more nuanced classifications than a simple dichotomy. Because there are varying degrees of uncertainty about likely district control, modern political analyses distinguish between safe, party leaning and toss-up districts. Assigning districts with checkered electoral results to political parties based on small registration margins can be very misleading.

18. The AIRC took the more sophisticated approach, looking carefully at past electoral returns in order to assess whether a district might be competitive or not. They developed 9 separate indices, combining registration and election returns between 2004 and 2010 in various ways. This gave them a better sense of the range of possible electoral outcomes in a given district over time. Using this methodology, there were 3 districts in the enacted plan that consistently yielded single digit scores across all of the 9 measures-LDs 8, 9, and 10. I would call them competitive. These districts had population deviations of -2.2%, 0.1% and 0.9%, respectively. There is no apparent bias in this pattern.

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19. Taking the marginal districts out of the mix (i.e., 8, 9 and 10) leaves 27 districts remaining. Of these 27, 7 of the districts (6, 11, 13, 15, 23, 26, 29) had very small population deviations of less than 1%. To put it another way, the AIRC did not use its population discretion in constructing these districts. If we set aside the *competitive districts* (because they cannot be classified as being for one or the other party with any certainty) and the districts with the plus or minus *1% population deviations*, there are 20 remaining districts (12 Republican and 8 Democratic) that can be classified for one of the parties based on the 9 competitive index scores. The 12 Republican districts are over-populated by more than 1%, and the 8 Democratic districts are under-populated by more than 1%. However, *all 8 Democratic districts are majority-minority ability to elect districts.* In other words, there is a clearly valid, rational state purpose—complying with Section 5 of the VRA—behind this population deviation pattern.

20. Even keeping districts with less than 1% population deviations in the mix or not characterizing LD 9 as competitive, it is clear that the population differences are the result of the Voting Rights opportunity districts. Of the 11 Democratic districts identified by the 9 indexes, two are slightly overpopulated (LD 9, 26) and the rest are under-populated majority-minority ability-to-elect districts. If the intent had been to help Democrats per se, the AIRC should have under-populated all of the competitive and Democratic leaning districts, not just the minority opportunity districts. This is not the pattern we see.

21. The AIRC devoted much attention to defining and identifying minority opportunity districts. Bearing in mind that the AIRC in the post 2000 Census redistricting had been challenged the prior three decades on Section 5 grounds by the Justice Department, it was understandable that the AIRC would be especially careful in this regard in 2011. The decision to under-populate the Section 5 districts is consistent with the general pattern of VRA care and caution I saw in the record. The AIRC hired an experienced VRA expert, Bruce Adelson. In the briefings they received from him, he advised them that they could under-populate minority-majority districts in order to achieve VRA goals, as the first AIRC had done a decade earlier. They held numerous hearings in minority areas and took testimony from groups and individual from those communities.

22. I saw considerable evidence in the record of the proceedings that the effort to avoid retrogression was made in good faith and was not a partisan issue. The Commission adjusted the initial grid maps to build Section 5 districts, looking at various alternative ways to do this and then combining the suggestions where possible. The transcripts for the period October 5 to 9, when the AIRC was seeking to merge two proposals into one, indicate that the Commissioners were actively seeking ways to enhance minority representation. For example Commissioner Freeman, a Republican, had been working on a map. *See* 10/3/2011 Map, 9 Minority Districts Options 1 version 8a. Likewise, Commissioner McNulty, a

Democrat, had also been working on a draft map. *See* 10/3/2011 Map, 9 Minority Districts Options 2 version 8a. The Commission merged the two maps using Commissioner Freeman's map as a starting point in Maricopa County, where it contained four majority minority districts, and Commissioner McNulty's map in southern Arizona where it contained three majority-minority districts. 10/5/11 Tr. at 95. Both maps contained a majority Native American district in Northeastern Arizona. Thus, the merged map contained eight majority minority districts.

23. Before approving the draft map, the Commission worked to create two additional majority-minority districts in Maricopa County, Districts 24 and 26, and to otherwise strengthen the map. *See, e.g.*, 10/6/11 Tr. at 108-11, 185-99; 10/7 Tr. at 38-49. The Commission made many changes with that intention, such as: splitting Yuma County to improve the minority opportunities in southwestern Arizona (e.g., 10/3/11 Tr. at 190-91; 10/10/11 Tr. at 204-05); maintaining three majority-minority districts in southern Arizona as the constant for all plans in that part of state (10/10/11 Tr. at 20, 206; 10/3/11 Tr. at 220-21); including the Navajo Nation with the White Mountain and San Carlos Apache Tribes in a majority Native American District *(e.g.*, 10/3/11 Tr. at 226).

24. The draft map was adopted by a 4-1 vote. No Commissioner criticized the map on the ground that there were too many voting rights districts in Maricopa County. *See* 10/10/2011 Tr. at 202-10.

Therefore, based on the public record, the creation of ten voting rights districts was not seen as a partisan issue or a pretext for maximizing Democratic representation in the legislature, as Plaintiffs now claim.

25. Again in the period from November 29 to January 17, when the AIRC was making its final changes, evidence of their determination to resolve any Section 5 issues completely is quite clear. Consider, for instances, the change orders given to their technical staff in this period to strengthen proposed LDs 24 and 26. *See, e.g.*, Exhibit 5-A-4-B[1] (Improve VRA LD 24 Change Order Map); Exhibit 5-A-4-N (Improve VRA LD 26 v2 Change Order Map); Exhibit 5-A-4-P (Improve VRA LD 26 v3 Change Order Map); Exhibit 5-A-4-BB (Improve VRA LD 26 v4 Change Order Report).

26. The public record shows that the Commission's adjustments from draft to final were made for legitimate purposes, including strengthening the ability-to-elect districts. For example, the Commission improved ability-to-elect Districts 24 and 26 in Maricopa County *(see, e.g.*, Exhibit 5-A-4-B (Improve VRA LD 24 Change Order Map); Exhibit 5-A-4-N (Improve VRA LD 26 v2 Change Order Map); Exhibit 5-A-4-P (Improve VRA LD 26 v3 Change Order Map); Exhibit 5-A-4-BB (Improve VRA LD 26 v4 Change Order Report)), as well as ability-to-

1. Exhibit references are to the exhibits in the Commission's legislative preclearance submission.

elect District 4 in southern Arizona. The Commission also strengthened and incorporated public comment related to District 7, the Native American ability-to-elect district. *See* 12/9/11 Navajo Nation LD 7 Change Order (incorporating parts of Improve VRA LD 7 12/8/11 and change orders regarding Schultz Flood area). It also adjusted District 8 in Pinal County, both to improve its competitiveness and preserve opportunities for minority voters in that area. *See* Improve Competitiveness of 8-11 Change orders; create VRA LD 8 v 2 McNulty. And it made other adjustments, such as removing the "tail" of Draft LD 2 into Cochise county and responding to public comment regarding keeping the I-19 Corridor between Tucson and Nogales in the same district. *See* 12/5/11 Cochise County & Green Valley Change Order.

27. With regard to improving District 24, the Commission's changes included removing sections of the draft district with fewer minority voters (this included a portion of south Scottsdale, and an area near 32nd Street and Indian School Road in Phoenix). *See* Exhibits 5-A-4-B and 5-A-4-L. Total Hispanic population in District 24 increased from 38.6% in the draft map to 41.3% in the final map, and HVAP increased from 31.8% to 34.1%. *Compare* Exhibit 5-A-3, with Exhibit 2-A. Total minority population increased from 53.6% to 55.1%, and minority VAP increased from 46.2% to 47.6%. *Id.* The Commission made modifications to two Native American reservations—it moved the Fort McDowell reservation at its request, and it moved the

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Salt River Pima-Maricopa reservation to District 26 to strengthen the minority ability to elect there. *See, e.g.,* Exhibit 9-M; *see also* 12/5/11 Tr. at 187-88; 12/8/11 Tr. at 70. In addition, to improve the ability to elect in District 26, the Commission removed a predominantly White Non-Hispanic area called Dobson Ranch in Mesa (Exhibits 5-A-4-S and 5-A-4-BB; 12/19/11 Tr. at 62) and added part of south Phoenix that had a high-minority population (Exhibit 5-A-4-BB; 12/19/11 Tr. at 63). It is also important to note that the Commission considered other ways to strengthen the ability to elect for District 26, but rejected them due to concerns about splitting communities of interest, specifically with the option of adding Guadalupe *(e.g.,* 12/9/11 Tr. at 26-29 (Richard Miranda stating that Guadalupe should be kept with south Phoenix); 12/15/11 Tr. at 107-09 (comment from Sally Ann Gonzales to keep Guadalupe with south Phoenix); 12/19/11 Tr. at 67-68 (Comment from Richard Sanchez)), or weakening the ability to elect with respect to parts of Mesa in District 18 (Exhibit 5-A-4-N). With respect to District 4 in southern Arizona, the Commission looked at adding areas with Hispanic voters and removing White Non-Hispanic areas to improve the ability to elect. It also adjusted the district boundaries to improve the ability to elect. *See* Exhibit 5-A-4-O; 1/10/12 Tr. at 60; Exhibit 5-A-4-A (Improve VRA LD 4 Change Order Map); Exhibit 5-A-4-1 (Improve VRA LD 4 v2 Change Order Map). These changes were documented in the Commission's submission to the Department of Justice.

28. The AIRC understood that it could not retrogress from the benchmark districts without incurring a Justice Department objection. Given the uncertainty of what would be considered by the Justice Department an ability-to-elect district in the old plan, the Commissioners felt it was necessary to create 10 ability-to-elect districts. They incorporated specific suggestions such as the Arizona Minority Coalition's plan for three majority-minority districts in Maricopa County and Native American proposals for LD7. They hired a renowned expert in political methodology, Professor Gary King of Harvard University, to perform statistical tests on their tentative map to assess the ability of the under-represented groups to elect a candidate of choice and to propose changes if necessary. In sum, the transcripts clearly demonstrate that the AIRC was determined not to fail the Section 5 requirements. In the end, their efforts were successful.

29. The previous decade's Commission originally purported to create 10 districts in which minorities would be able to elect candidates of choice. *See* 8/23/2002 Letter from L. Hauser to DOJ at 1. Nonetheless, the DOJ objected, said that the Commission had only created five, and required the Commission to strengthen three districts. Therefore, 50% of the districts that the Commission had offered as minority ability-to-elect districts were held not to be by the DOJ, and the Commission, even with a buffer of 20% (2 of 10), drew an objection. In adopting the map for this decade, the Commission did not know how

many ability-to-elect districts the DOJ would conclude were contained in the benchmark map, and therefore had to operate under uncertainty. Drawing an objection from DOJ is costly in various ways including the inability to bail out of Section 5 for 10 years, the cost of having to draft and seek preclearance of a new map, and the potential of having an election using an emergency map drawn by the court. Because the DOJ did not file an objection, the Commission still does not know how many ability-to-elect districts the DOJ concluded were present in the benchmark map.

30. The 2012 November election results provide further confirmation that the AIRC successfully created 10 minority-majority ability-to-elect districts. Two of the Arizona statewide races—the Senatorial race between Richard Carmona and Jeff Flake and the Presidential race between Mitt Romney and Barack Obama—featured matchups between white and nonwhite candidates who lost statewide. When we examine the results in the 1 0 districts the AIRC created to be in compliance with Section 5, we see that the nonwhite candidate prevailed in all of them. Based on these results, there is no apparent need that I can see to second-guess or remedy the AIRC's Section 5 efforts.

31. As noted in the House Concurrent Memorial of 2011, which was approved by the Republican majority in the Arizona Legislature, the AIRC under-populated the minority-majority ability-to-elect districts after the 2000 census and the Memorial did not criticize

this practice in the draft map it reviewed. HCM 2001, 50th Leg., 4th Special Sess. (2011). The AIRC in 2011 was continuing a policy that had been used in the past. The rationale for under-populating Section 5 districts is as follows. To begin with, minority areas have historically been undercounted by the census. While the biases have been reduced in recent years, the Latino population, in particular, is still difficult to count accurately due to the presence of undocumented workers and the housing arrangements they are forced to reside in. Secondly, under-represented minority communities typically have a lower ratio of voters to population, especially as compared to higher socioeconomic white neighborhoods. In Native American and black communities, this is because of lower rates of home ownership and education. Home ownership matters because renters move more often and are more likely to become unregistered. Education matters because it affects issue knowledge and the ability to navigate voting eligibility and participation rules. Hispanic areas have the additional problems of lower than average levels of citizenship, English language skills and voting age population. As a consequence, adding higher socio-economic tracts to a Section 5 district can negatively affect a majority minority community's ability to elect more than the mere population numbers would ostensibly suggest.

32. Under-populating minority ability-to-elect districts thus serves a protective purpose in the sense that it minimizes the necessity of importing higher socio-economic census tracts in order to balance

populations exactly. It also eases the burden of hitting the specific benchmark totals required by Section 5. Retrogression logic requires that the new districts do no worse than the status quo districts. Hitting benchmark goals is easier when there is a lower population option as the census tract and bloc choices on a district's periphery might have below non-retrogressive minority percentages, or require contorted non-compact geographic shapes to achieve the right mix of new population.

33. The latter point is particularly relevant when we bear in mind Professor King's sophisticated VRA analysis. His statistical models used five statewide races between 2004 and 2010 that featured white and nonwhite candidates in order to calculate a minority community's ability to elect a representative of its choice. The ability to elect is not merely a function of group size. It also depends on the cohesion of the minority group and the polarization levels of other racial groups in the district. In Figure 2 of his report on the legislative district plan, Professor King showed that white versus nonwhite polarization varies considerably across Arizona's legislative districts. This is important because it means the target minority population level can be lower where polarization is less and higher where polarization is greater. The AIRC relied on this logic in creating majority-minority Districts 24 and 26.

34. In Figure 3, Professor King assessed the ability to elect by incorporating both cohesion (support

among the main minority group) and polarization (support among the other racial and ethnic groups) considerations. Districts in the upper right hand quadrant fulfilled both conditions and demonstrated an ability to elect. While some of the benchmark districts fell out of the quadrant, none of the proposed ones did. But, a number of the proposed districts were very close to the line. This suggests the delicacy of these constructions and how they could be thrown off by small population changes.

35. The possibility that adding more population might actually weaken the ability to elect is suggested by the last part of Professor King's analysis. Assuming an ability to elect goal of 55% vote for the "candidate of choice," Professor King assessed both how many proposed Section 5 districts met this target and what it would take to bring the others up to the 55% level. He concluded that there was no feasible path to improving districts that fell below that 55% threshold. In short, adding more population for the sake of achieving nearly exact population equality was not going to improve the ability to elect.

36. In the end, it is clear that the AIRC followed the DOJ guidelines regarding a functional analysis, rather than only using census numbers, and used an abundance of caution to meet its VRA goals, in light of the uncertainty of the number of ability-to-elect districts that the DOJ would conclude were present in the benchmark map. Under-populating the ability-to-elect areas was one result of that approach. The

consequence was that the other districts had to absorb the excess population. Even so, five of the Republican districts and two of the competitive districts had trivial population deviations of plus or minus 1%. All but one of the majority white Republican district population deviations are under 4%. The AIRC under-populated 8 of the 10 opportunity districts by amounts above 1% and overpopulated 12 out of 17 majority white Republican districts by amounts over 1%. It also made specific efforts to reduce population deviations, for example in Population Balance Change Order (Exhibit 5-A-4-Y).

37. Did this result in any likely electoral harm for Republicans? The AIRC would have had no reason to think so. According to the 9 competitiveness indicators, the Republicans could count on 17 safe districts to 10 for the Democrats plus 3 additional competitive districts. This meant that the Republicans were assured at least 56.6% of the districts and had the potential of winning 67%. As a baseline comparison, their statewide two party registration share as of June 2012 was 54.4%. According to all 9 competitiveness measures and under a worst-case scenario that keeps the Republicans from winning any of the competitive districts, they would still get proportionate share representation and maintain control of the state legislature. And under more favorable electoral circumstances (*e.g.*, a national swing like the 2010 election), their majority could be greater than proportionate. There was no plausible scenario for Democratic control of the legislature as

their share was projected to vary between 33% and 43% (which is slightly below a proportionate share given their party registration of 45.6%).

38. As stated earlier, redistricting is about tradeoffs between competing values after basic constitutional requirements are met. The AIRC chose to use its population deviation discretion in order to meet its Section 5 obligations and to avoid the preclearance problems that the Arizona has had in the past. The tradeoff was higher population deviations for the predominantly white districts, of which almost 1/3 were deviations under 1%. Given the estimates from the competitiveness scores, the AIRC had no reason to believe that the Republicans would be treated unfairly as a result. All of the Democratic districts that were under-populated by more than 1% were Section 5 districts.

39. The AIRC also accomplished it many of its other goals as well as avoiding a Section 5 objection. The scores for compactness and city and county splits are quite good, for instance. It even had some success in achieving competitive districts. District 8, for instance, resulted in competitive races in the 2012 election with a Democrat winning a very close State Senate race and two Republicans winning the state House race

40. In sum, there appear to be valid, rational state purposes behind the observed population deviation pattern in the AIRC's adopted legislative plan. Its

purpose was to ensure that their districts would be precleared. The slight over-population in the majority white districts was a politically innocuous byproduct of that effort.

Dated this 15th day of January, 2013.

/s/
Bruce E. Cain

APPENDIX E — EXPERT REBUTTAL REPORT OF PROFESSOR BRUCE E. CAIN, DATED FEBRUARY 13, 2013

Expert Rebuttal Report of Professor Bruce E. Cain

Wesley W. Harris et al. v. Arizona Independent Redistricting Commission, et al.

1. In my January 15, 2013 report, I set forth my qualifications and experience in redistricting, my compensation for this work, my testimony within the last four years and my publications within the last ten years. The previous report also referenced the materials I consulted in the formulation of my analysis. That report, including the information referenced above, is incorporated herein by reference. In addition to the materials listed in my initial report, I have now consulted the following additional sources:

    a. Maps illustrating Plan X changes and maps comparing Plan X changes with AIRC districts

    b. Compactness and Competitiveness Report for Plan X

    c. Change Order for Plan X

    d. Splits Report for Plan X

    e. Components Report for Plan X

f. Report Comparing Compactness of AIRC Map and Plan X

g. 2012 Arizona Primary and General Election Canvasses

2. Dr. Hofeller's Report purports to show that the AIRC "appear[s] to have engaged in a cynical process of deliberately under populating Democratic districts ... to advantage of future Democrat legislative candidates," and "that there is no basis, under the requirements of Arizona redistricting criteria, for such high deviations." Moreover, he contends "[c]onformance with the Voting Right [sic] Act is factually clearly not a rationale for the IRC's violation of the equal population standard." He presents a minimal deviation plan (the so-called "Plan X") that he claims respects city and county boundaries while maintaining the "same or greater percentages of adult Latino population" as found in the AIRC's final plan.

3. I have reviewed the evidence in Dr. Hofeller's report and conclude the following: Dr. Hofeller's analysis exaggerates the partisan differences in the data and ignores all of the statements in the public record about what the AIRC was attempting to do. He alleges harm to the Republican candidates, but provides no evidence that these population deviations had any significant negative effect on Republican

state legislative candidates. Dr. Hofeller fails to see the purpose of those districts that fell below the ideal population because he adopts an extremely narrow definition of a Section 5 ability-to-elect district that conveniently ignores the majority Native American district and reduces the number of Hispanic ability-to-elect districts from 9 to 7. He also provides no refutation of the AIRC's Voting Rights expert's or the Commission's rationale for drawing the Section 5 seats as they did. Moreover, Dr. Hofeller ignores the Justice Department's guidelines for Section 5 preclearance and the supportive public statements of the very communities that he claims were subjected to "intentional invidious dilution." His minimal deviation plan lowers the number of ability-to-elect seats. In other words, Dr. Hofeller urges a state that has failed Section 5 preclearance repeatedly to ignore Justice Department preclearance guidelines, expert advice and public testimony in order to adopt a minimal population deviation plan with fewer ability-to-elect districts and no demonstrable political benefit. In my opinion, this is not good advice.

4. Dr. Hofeller exaggerates the partisan pattern in the data and downplays the AIRC's clear intent to satisfy the Voting Rights Act. To begin with, he claims that the range of population deviations in the AIRC's plan is "remarkably and unnecessarily wide," but provides no evidence

for this statement. As I discussed in my report, the average population deviation in the AIRC's plan is only 2.3%. Moreover, the range is not "remarkably wide." According to *NCSL* data, 29 of the 35 states it reviewed adopted plans with population deviations above 1%, including 12 states that had population deviations above 9% as compared to the AIRC's 8.78%. None of the other Section 5 states in the sample adopted minimal population deviation plans, including states where Republicans controlled the line - drawing process. Indeed, Louisiana and South Carolina both adopted state legislative plans with total deviations of 9.86% and 9.55%, respectively, and the total population deviation in Texas (8.04%) was very similar to Arizona's total deviation.

5. When describing the partisan differences in population deviations, Dr. Hofeller fails to distinguish between the sizes of the population deviations and assumes that even the smallest extra population imposes some sort of political burden. Using a simple measure of the difference between Democratic and Republican registration, he states that all but one (LD 13) of the Republican districts were over-populated. He fails to mention that 5 of these Republican registration plurality districts had population deviations under +1% and only 4 had population deviations above +3%. Most of the Republican districts had quite moderate deviations of between +1.1% and +2.9%.

6. When describing the partisan distribution of the district population deviations, he overlooks the fact that three districts (LDs 8, 9, and 10) were designed to be competitive based on various indexes the AIRC developed, and therefore less predictably Democratic or Republican than the other districts. In 2012, LD 8 which he classifies as Democratic was won by the Republican candidates for US President and US Senate. There is also some confusion in his report about LD 13, which is slightly under-populated. At one point in the report, he identifies it as a Republican district and at another he adds it to the list of under-populated Democratic districts.

7. However, most importantly, Dr. Hofeller downplays the fact that the clear intent in creating the majority-minority districts in the AIRC final plan was to satisfy the Voting Rights Act. He does this in several ways. First, he adopts his own standard for passing Section 5 preclearance, which appears to be drawing Hispanic seats as close as possible to 50% HCVAP. He disregards the AIRC's decision to draw 10 ability-to-elect majority-minority districts and mischaracterizes the AIRC's plan as creating "7 purported and weak ... Hispanic districts, only two of which had HCVAP's above the HCVAP of Benchmark District 27." He further concludes that based on these facts, the purpose was "to move substantial numbers of Hispanic voters into neighboring non-Hispanic white Democrat districts to shore up the Democrats' partisan advantage."

8. His analysis is problematic in many ways. First, it is clear from his discussion that he believes that ability to elect a candidate of choice only means electing Hispanic candidates: in other words, descriptive representation. He performs no Gingles tests to demonstrate that the non-Hispanic candidates were not the candidates of choice, or to determine the level of white-nonwhite polarization in these districts. He presents no evidence to suggest that 50% HCVAP is the right guideline. He does not dispute the voting analyses of the AIRC's expert, Professor Gary King. He demonstrates no concern about packing, which is a significant Voting Rights Act violation.

9. It is important to bear in mind that Arizona had repeatedly failed to achieve preclearance. To ensure that this would not happen again, the AIRC paid close attention to the Justice Department's published Section 5 guidelines (2/9/2011) that explicitly state that "the Attorney General does not rely on any predetermined or fixed demographic percentages at any point in the assessment. Rather, in the Department's view, this determination requires a functional analysis of the electoral behavior within the particular jurisdiction or election district." This functional analysis goes beyond mere registration data to include electoral histories, turnout, and voting patterns in calculating retrogressive effect. Among the many factors the Justice Department

looks at is not just whether "minority populations are fragmented among different districts," but also whether "minorities are over - concentrated in one or more districts." It is clear from the public record that the AIRC was trying to steer a path between these two potential violations. By comparison, Dr. Hofeller's analysis seems to ignore the Department's guidelines and adopts the goal of HCVAP maximization.

10. The simple fact is this: all of the Democratic districts that fell below the ideal population were ability-to-elect districts. The fact that the districts were below the ideal population by small amounts helped the AIRC build its case for Section 5 preclearance. If this were a tactic for partisan advantage, one might expect to see it used in the construction of the competitive districts, but there is no consistent pattern in them. The only competitive district below ideal population was District 8, which was truly competitive and cannot properly be characterized as Democratic. In fact, District 8 leaned Republican in the index measures and voted for Republican candidates in the US President and US Senate races.

11. It is hard to comprehend why Dr. Hofeller believes that Republicans were disadvantaged by this pattern of under - population. He maintains that Hispanic populations were withheld from the Hispanic opportunity districts to advantage white Democrats. But how exactly? All of the

clearly Democratic districts were majority-minority districts. Adding a small number of low-voting Hispanic voters would pose no threat to the clearly Republican districts. Even in the competitive seats, because minority populations have lower voting rates than non-Hispanic whites, Republicans are not at a disadvantage. Of the competitive districts, LD8 has the highest minority percentage and was below ideal population, but a majority in LD 8 voted for the Republican candidates in the 2012 Presidential and US Senate races. In 2012, a full slate of candidates from the major parties ran in LD 8, and voters in that district elected one Democratic state Senator and two Republican state Representatives.

12. Moreover, as I pointed out in my report, there is no evidence of harm overall to the Republican candidates in Dr. Hofeller's analysis. According to the index projections, the Republicans could count on winning 17 districts, plus they had an opportunity to win in 3 others. This meant that their share of districts would likely range between 56.6% and 67% as compared to a two-party registration share of 54.4%. Democrats were looking at projected district shares between 33% and 43% with a two-party registration of 45.6%. There is no evidence of a fairness problem that needs to be remedied.

13. Dr. Hofeller's alternative Plan X aimed to draw districts with minimal population deviations

while improving or maintaining the same HCVAP percentages in the ability-to-elect districts. He achieved the first goal but not the second. Plan X has very small population deviations, ranging between -0.2% and +0.2%. But, comparing Plan X to the AIRC's plan, I find that he lowers the HCVAP in LDs 24, 26 and 2 by -7.3%, -2.7%, and -.2%, respectively. Plan X also only achieves HCVAP increase of over 1% in two instances (LD27 by 1.3% and LD30 by 2.1%), and in both instances these are both majority 18+ Hispanic population districts with total minority 18+ populations of at least 64.5% in the AIRC plan. In other words, he slightly increases the HCVAP in overwhelmingly minority districts but significantly weakens the minority percentages in two districts (from 47.6% to 37.7% in LD24 and from 47.7% to 43.3% in LD 26) that had very close to 50% minority 18+ populations. The shift in LD 24 is particularly significant, dropping its minority 18+ population by 10 points. These districts were considered ability-to-elect districts in the careful analysis of Professor King, which revealed low levels of polarization between white and minority voters in these districts. At no point does Dr. Hofeller question Professor King's conclusions or evidence. In other words, not only does Plan X fixate on one statistic, i.e., HCVAP – ignoring the Justice Department's more complex and nuanced functional analysis – but he even fails to achieve his limited goal of increasing or maintaining HCVAP in all the Section 5 ability-

to-elect districts, substantially weakening the minority population's ability to elect in two of these districts (LDs 24 and 26). Throughout his report, Dr. Hofeller simply ignores that the Commission intended to establish LDs 24 and 26 as ability-to-elect districts (e.g., Hofeller Report Paragraphs 16-18).

14. The two premises of the AIRC model are that the task of devising new districts should not be done by incumbent legislators and the public's input should be incorporated into the final boundaries. The Commission made its decisions regarding the legislative map after months of public comment and transparent debate about the various redistricting criteria. The changes made by Dr. Hofeller in Plan X do not reflect this extensive public testimony. His criteria for Plan X (set out in Paragraph 47 of his Report) fail to include several of Arizona's constitutional criteria, including, for example, communities of interest and competitiveness. By focusing on a minimal population deviation plan, he ignores policy choices that the Commission made regarding communities of interest and other redistricting criteria, in many cases disregarding public input. I will provide several examples.

15. Dr. Hofeller chose to move the predominantly white non-Hispanic area in Mohave County in northeastern Arizona from Legislative District 5 to District 7, the majority Native American

district. The Commission's earlier draft map had also included that portion of Mohave County in LD 7, but the Commission later decided to include it in LD 5, which contained all other parts of Mohave County that were not part of an Indian Reservation. (Change Orders Improve VRA of LD 7 12/8/11; Navajo Nation LD 7 Map 12/9/11; 12/9/11 Tr. at 14:12-15:15.) This move was supported by public testimony. (Bullhead City Hearing, 10/19/11 Tr. at 23:16-24:24, 30:21-32:18.) Commissioners also considered the impact of this change in light of other modifications they considered to LD 7. (12/8/11 Tr. 41:8-19, 43:5-8.) While Dr. Hofeller's map may reduce population disparities between Districts 5 and 7, it does so by ignoring these considerations and by making different policy choices regarding communities of interest and the best way to divide Mohave County.

16. Dr. Hofeller's plan also modifies the boundary between LD 6 and LD 7 north of Flagstaff in an area referred to as the Schultz Flood area. There was public testimony supporting including this area with Flagstaff in LD 6 because of the area's ties with Flagstaff. (Flagstaff public hearing, 10/13/11 Tr. at 23:1-25:14, 30:1-14, 32:8-19, 60:12-63:24, 72:19-74:22, 98:14-100:19.) The Commission modified the boundaries of LDs 6 and 7 based on this input (12/12/11 Tr. at 147:24-148:13) while Dr. Hofeller's map ignores the public testimony and moves some of this area back to LD 7.

17. Plan X brings LD 5 into Maricopa County and takes in an area that the Commission had decided to put in LD 13. The Commission's intent was to put more rural areas of Maricopa County in LD 13, but Dr. Hofeller's plan does not. The consideration here is community of interest, not partisanship. Under both the Commission's map and Plan X LD 13 is predominantly Republican. The Commission heard public testimony about keeping LD 13 rural and attempted to modify the draft map to respond to these concerns. (Yuma Public Hearing, 10/29/11 Tr. at 29:9-31:5, 35:1-37:11; 12/20/11 Tr. at 165:21-167:6, 204:16-209:4). Dr. Hofeller's map, by taking more population from Maricopa County and less from Yuma County, undermines the rural logic for LD 13.

18. In the Phoenix metropolitan area, among other things, Dr. Hofeller substantially changes Districts 24 and 26, undoing the AIRC's intention to create these two ability-to-elect districts. His LD 26 incorporates Mesa, the Salt River Pima - Maricopa Indian Community and parts of south Scottsdale. The Commission's map linked a smaller portion of south Scottsdale with LD 24, which extends east into Phoenix. Instead of linking North Tempe with west Mesa and the Salt River Pima-Maricopa Indian Community in LD 26, Dr. Hofeller links a smaller portion of north Tempe with portions of east Phoenix that the Commission had included in LD 24 and 28. This significantly alters the communities joined in these legislative districts.

19. Dr. Hofeller's map also substantially alters LD 30, which the Commission created as a Hispanic majority district on the west side of Phoenix. Dr. Hofeller extends the district into east Phoenix to pick up areas that the Commission had assigned to LD 24 as part of the effort to make LD 24 a district in which minority voters had the ability to elect a candidate of their choice. As explained in Paragraph 13 above, the Commission's LD 30 already had a majority - minority population over 60%. His map adds more Hispanic population to LD 30 at the expense of LD 24.

20. The alternative plan that Dr. Hofeller proposes separates Paradise Valley from areas such as Arcadia and the Biltmore. He places Paradise Valley in LD 28 but Arcadia and the Biltmore in LD 24. The Commission, after hearing public testimony about the connections between these areas, included them together in LD 28 (12/20/11 Tr. at 85:2-87:11, 89:5-90:18), rejecting a proposal that would have split these areas between different legislative districts. (12/20/11 Tr. at 202:20-24, 204:11-13.)

21. His map divides the "copper corridor" by placing most of the mining communities in LD 8 but putting communities in southeastern Pinal County, such as San Manuel and Mammoth, in LD 11. Testimony supported keeping the copper mining communities together and apart from the predominantly white non-Hispanic areas such as

Oro Valley, which are in LD 11. (San Carlos Public Hearing, 10/21/11 Tr. at 88:4-91:14.) Dr. Hofeller's alternative does not keep the "copper corridor" together, ignoring this community of interest consideration. The Commission attempted to make LD 8 more competitive and provide as much opportunity as possible for the minorities in that district to have the ability to elect the candidate of their choice. (12/16/11 Tr. at 137:4-141:15, 144:6-145:25, 179:16-182:25; 12/19/11 Tr. at 5:5-51:25.) Instead, Dr. Hofeller's map makes LD 8 less competitive and less Hispanic.

22. Dr. Hofeller's map changes the boundaries within Tucson's Hispanic neighborhoods. His map abandons the 22nd Street boundary that the Commission selected after hearing public testimony. It also moves the predominantly Hispanic town of South Tucson from LD 3 to LD 2. The Commission received specific testimony regarding district boundaries within Tucson, and his report does not appear to consider communities of interest within these neighborhoods. (12/20/11 Tr. at 73:6-84:20, 184:4-197:7.)

23. Dr. Hofeller's alternative divides the Rita Ranch area south of Tucson in a manner different than the Commission. At a public meeting, the Commission modified the boundary in an area south of Tucson to avoid splitting a neighborhood. Instead, Dr. Hofeller's map divides this area. (12/19/11 Tr. at 86:16-91:5.)

24. Dr. Hoffeler's map keeps the Town of Gilbert entirely within LD 12, which is consistent with public testimony from Gilbert. (10/18/11 Tr. At 45:2-47:7.) But he omits the Town of Queen Creek, which favored being included in LD 12. (10/18/11 Tr. at 22:19-23:20.) His map of LD 12 also modifies LD 17, which the City of Chandler supported as configured by the AIRC. (10/18/11 Tr. at 19:4-20:16 19:4; 10/8/11 Tr. at 168:4-178:23.)

25. Dr. Hofeller's alternative map splits 14 fewer census places (which include cities and towns) than the Commission's map (453 compared to 439), but splits 62 more census tracts than the Commission (1,219 compared to 1,281). Once again, there is a trade-off in goals. The Arizona Constitution directs the use of city, town and county boundaries *and undivided census tracts* to the extent practicable. Dr. Hofeller favored city and town boundaries, but chose to divide more census tracts than the Commission's map.

26. In short, there are numerous instances in which Dr. Hofeller's map contradicts policy choices that the Commission made after extensive public scrutiny and debate. Redistricting is inevitably about trade-offs. Putting more emphasis on tight population variances inevitably puts more constraint on the ability to satisfy other criteria such as preserving communities of interest or creating majority minority ability-to-elect districts. Plan X prioritizes the preferences of a single mapmaker over public testimony and the deliberations of the AIRC.

27. To conclude, there is no basis in evidence for Dr. Hofeller's allegation that the districts were deliberately under-populated to advantage Democratic candidates. Even he concedes that the correlation with minority percentages is stronger than with party. The fact that there is any relation to party at all is because the ability-to-elect districts lean towards the Democratic party and the Republican seats are predominantly non-Hispanic white. As is abundantly clear from the public record, the AIRC's population deviations resulted from a deliberate strategy to avoid the mistakes of the past and achieve preclearance. Dr. Hofeller cites the California Citizen Redistricting Commission's lower population deviations, but fails to acknowledge that California is not a Section 5 state. Data from the NCSL reveal that the other Section 5 states also used their allowed discretion in population deviations. The AIRC's plan successfully passed preclearance. Dr. Hofeller's Plan X achieves near perfect populations but at the expense of Section 5 goals. His plan in my opinion would have been an imprudent choice and may not have received preclearance.

Dated this 13th day of February, 2013.

/s/_____
Bruce E. Cain

APPENDIX F — PLAINTIFF'S SECOND AMENDED COMPLAINT IN THE UNITED STATES DISTRICT COURT, DISTRICT OF ARIZONA, FILED NOVEMBER 16, 2012

UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

Case No. CV 12-0894-PHX-ROS

WESLEY W. HARRIS, *et al.*,

Plaintiffs,

v.

ARIZONA INDEPENDENT REDISTRICTING COMMISSION, *et al.*,

Defendants.

PLAINTIFF'S SECOND AMENDED COMPLAINT

For their first amended complaint, Plaintiffs Wesley W. Harris, LaMont E. Andrews, Cynthia L. Biggs, Lynne F. Breyer, Ted Carpenter, Beth K. Hallgren, James C. Hallgren, Lina Hatch, Terry L. Hill, Joyce M. Hill, Karen M. MacKean, and Sherese L. Steffens, allege as follows:

OVERVIEW

1. By any objective standard, the work of the majority on the Arizona Independent Redistricting Commission ("IRC") has been a failure. It drew fewer

competitive districts than the number drawn in 2002. It designed bizarre-shaped districts, glaring examples being Legislative District 6, which cobbles together parts of Coconino, Yavapai, Gila, and Navajo Counties, and Congressional District 4, which stretches from Bullhead City to Florence to Yuma. It violated section 2 of the Voting Rights Act by depriving minorities of the number of legislative districts the Act required for them. It systematically overpopulated Republican-plurality districts and under-populated Democrat-plurality, the obvious goal being to maximize the number of Democratic districts. It packed Republican incumbents into districts to force them to run against each other. The selection of the putatively independent chairperson was marred by material omissions from her application and from her interview. Had the chairperson disclosed her connections to the Democratic Party, she never would have been selected as chairperson. The IRC unfortunately quickly polarized around party lines, with the nominally independent chairperson siding with the two Democrats on every substantive issue, including the selection of a partisan Democratic firm as mapping consultant. The IRC's work was late, and it wasted public money. When the voters passed Proposition 106 in 2000 to create the IRC, they wanted to take politics out of redistricting. This IRC put politics front and center – specifically to favor Democrats. In doing so, as described below, it violated the one-person/one-vote requirement of the equal protection clause of the Fourteenth Amendment to the United States Constitution, *Larios v. Cox*, 300 F.Supp.2d 1320 (N.D. Ga. 2004), *aff'd sub nom. Cox v. Larios*, 542 U.S. 947 (2004), and the equal population requirement of ARIZ. CONST. art 4, pt. 2, §1(14)(B).

Appendix F

NATURE OF THE ACTION

2. This action is brought by Plaintiff Arizona qualified electors to challenge the final map of Arizona legislative districts ("Final Legislative Map") approved by the IRC on or about January 17, 2012, on the grounds that the legislative districts created by the IRC violate the one-person/one-vote requirement of the equal protection clause of the Fourteenth Amendment to the United States Constitution, and violate the equal population requirement of ARIZ. CONST. art 4, pt. 2, § 1(14)(B), by systematically overpopulating Republican plurality districts and systematically under-populating Democrat plurality districts with no lawful state interest justifying such deviations from equality of population among Arizona legislative districts.

PARTIES, JURISDICTION, AND VENUE

3. Plaintiffs are all qualified electors of the State of Arizona, registered to vote in Arizona, and members of the Republican Party. The addresses at which they are registered to vote in Arizona and the legislative districts in which they reside are as follows: Wesley W. Harris, 14802 N. Coral Gables Drive, Phoenix 85023, Legislative District 20; LaMont E. Andrews, 3366 E. Cardinal Way, Chandler 85286 Legislative District 17; Cynthia L. Biggs, 10612 S. Greenfield Rd., Gilbert 85234, Legislative District 12; Lynne F. Breyer, 7629 N. Via del Paraiso, Scottsdale 85258, Legislative District 23; Ted Carpenter, 9727 E. Twin Spurs, Florence 85132, Legislative District 8; Beth K. Hallgren, 3400 S. Ironwood Drive, Lot 236,

Apache Junction 85120, Legislative District 16; James C. Hallgren, 3400 S. Ironwood Drive, Lot 236, Apache Junction 85120, Legislative District 16; Lina Hatch, 1325 W. Pebble Court, Gilbert 85233, Legislative District 17; Terry L. Hill, 2677 Arizona Highway 77, Show Low 85901, Legislative District 6; Joyce M. Hill, 2677 Arizona Highway 77, Show Low 85901, Legislative District 6; Karen M. MacKean, 4422 Larkspur Road, Show Low 85901, Legislative District 6; and Sherese L. Steffens, 5869 W. Oasis Road, Tucson 85742, Legislative District 11.

4. All Plaintiffs reside in an overpopulated legislative district, and the resulting violations of the one-person/one-vote requirement of the equal protection clause of the Fourteenth Amendment to the United States Constitution, and the equal population requirement of ARIZ. CONST. art 4, pt. 2, §1(14)(B), as alleged in detail below, have proximately caused Plaintiffs and each of them to suffer concrete and particular injuries, *i.e.* the unconstitutional dilution of their votes, for which this Court is able to provide relief.

5. Defendant IRC is a commission established by ARIZ. CONST. art 4, pt. 2, § 1(3), "to provide for the redistricting of congressional and state legislative districts." The IRC can sue and be sued under ARIZ. CONST. art 4, pt. 2, § 1 in "legal actions regarding [its] redistricting plan."

6. Defendants Colleen Mathis, Linda C. McNulty, José M. Herrera, Scott D. Freeman, and Richard Stertz

currently hold office as members of the IRC, did so at all times material to this action, and are named herein as defendants solely in their official capacities. All of these defendants reside within the District of Arizona.

7. Defendant Ken Bennett currently holds office as Arizona Secretary of State, and is charged with certain official duties with respect to the conduct of elections to the Arizona Legislature. Defendant Bennett is named herein solely in his official capacity and as a nominal party in view of his election responsibilities.

8. This court has jurisdiction of this action under 28 U.S.C. §§ 1331, 1367, 2201, 2202, 2284, and 42 U.S.C. § 1983.

9. Venue is proper in the District of Arizona under 28 U.S.C. § 1391.

10. Because this is an action challenging the apportionment of the Arizona Legislature, a three-judge court has been convened pursuant to 28 U.S.C. § 2284 to try this action and to conduct all other proceedings as required by law.

ESTABLISHMENT OF THE IRC

11. On or about December 29, 2010, acting pursuant to authority granted by ARIZ. CONST. art 4, pt. 2, § 1(5), the Arizona Commission on Appellate Court Appointments ("Appointment Commission") nominated the requisite number of nominees to be considered for appointment

to the IRC. Specifically, the Appointment Commission finalized a pool of 25 candidates for appointment to the IRC: ten each from the Democratic and Republican Parties, and five who were not registered with either of those parties.

12. A question quickly arose whether three of the individuals nominated by the Appointment Commission qualified for a seat on the IRC under the requirements of ARIZ. CONST. art. 4, pt. 2, § 1(3).

13. To challenge the qualifications of these three nominees, an action was filed in the Arizona Supreme Court under the caption of *Adams v. The Commission on Appellate Court Appointments*, No. CV 10-0405-SA.

14. On January 19, 2011, the Arizona Supreme Court issued an order in this case, found therein that two of the three nominees in question failed to satisfy the constitutional requirements to serve as a member of the IRC, and directed that they be replaced. The opinion supporting the order is published at 227 Ariz. 128, 254 P.3d 367 (2011).

15. Pursuant to the Arizona Supreme Court's order, the Appointments Commission convened and nominated two additional nominees, one of whom was Mr. Stertz.

16. On or about the following dates, appointments to the IRC were made in the constitutionally prescribed order: January 31, 2011, the Republican Speaker of the Arizona House of Representatives appointed Defendant

Freeman, a registered Republican from Maricopa County; February 2, 2011, the Democratic Minority Leader of the Arizona House of Representatives appointed Defendant Herrera, a registered Democrat from Maricopa County; February 9, 2011, the Republican President of the Arizona State Senate appointed Defendant Stertz, a registered Republican from Pima County; and February 15, 2011, the Democratic Minority Leader of the Arizona State Senate appointed Defendant McNulty, a registered Democrat from Pima County.

SELECTION OF THE CHAIRPERSON AND HER MATERIAL OMISSIONS

17. In response to the rules or practices of the Appointment Commission, Defendant Mathis, a registered Independent from Pima County, submitted an application to the Appointment Commission, dated October 12, 2010. A true copy of the application is attached as Exhibit 1, and is adopted herein by reference. Therein Defendant Mathis omitted critical information, which, had it been known, would have identified her as biased to the Democratic Party and not impartial, and would have precluded her under ARIZ. CONST. art 4, pt. 2, § 1(3), from being nominated to the IRC as an Independent or and from being selected to serve as the Independent chairperson of the IRC.

18. Specifically, she failed to reveal (a) that Christopher Mathis, Defendant Mathis's husband, served in the 2010 election as treasurer for the campaign of Nancy Young Wright, a Democratic candidate for a seat in the Arizona House of Representatives from legislative

district 26 in Pima County, (b) on May 16, 2010, she donated $100 to the campaign of Andrei Cherny, then a candidate for Arizona State Treasurer in the 2010 election, (c) on May 4, 2010, Christopher Mathis donated $250 to the Cherny state-treasurer campaign, (d) on October 27, 2010, Christopher Mathis donated $100 to the Nancy Wright legislative campaign, (e) on August 10, 2010, she donated $10 to the Arizona List P.A.C., a committee for pro-choice democratic women in Arizona; and (f) on March 3, 2010, Christopher Mathis donated $75 to Arizona List P.A.C., and on August 10, 2010, donated another $10 to Arizona List P.A.C. A true copy of a campaign finance report of the Arizona Secretary of State's office reflecting such donations is attached as Exhibit 2, and is adopted herein by reference. This consistent pattern of service to Democratic causes and donations to Democratic candidates reveals that Defendant Mathis at heart was a Democrat, though dressed in Independent clothing.

19. Question number 6 on the application provides: "Is there any possible conflict of interest or other matter that would create problems or prevent you from fairly and impartially discharging your duties as an appointee to the Independent Redistricting Commission? Yes ( ) No ( ) If your answer is "Yes," attach an explanation. Defendant Mathis answered "No." Defendant Mathis did not disclose the information relative to her Democratic-Party ties on her application in response to this question.

20. On February 24, 2011, in a meeting called by the Arizona Secretary of State, the first four appointed Commissioners, constituting a quorum, met to select a

chairperson from among the five candidates who are not registered with either of Arizona's two largest parties.

21. During the February 24, 2011, interviews, Defendant Freeman indicated to Defendant Mathis that the IRC's political appointee members were looking for a chairperson who would bring balance and fairness to the IRC and asked Defendant Mathis whether anything in her background would call into question her ability to be fair. According to the minutes of this meeting, Defendant Mathis answered that "there is nothing in her background that would limit her ability to be fair and as long as she did not have to make decisions about buying heavy equipment she would be okay." In response to questioning from Defendant McNulty about her management style, the meeting minutes report that Defendant Mathis responded that she liked "to create an environment where people feel they can trust her and are comfortable with what she is trying to do" and that it was "important to be open and impartial and achieve the end result by consensus."

22. This was an opportunity for Defendant Mathis to correct the material omissions she had made on her application. Instead, as disclosed by her interview answers, she doubled down and continued to maintain a facade of impartiality.

23. Although they interviewed the five candidates and then met in closed session, the Commissioners did not select a chairperson that day. To allow time for further reflection, the Commissioners decided to meet again on March 1, 2011.

24. On March 1, 2011, after meeting in closed session for a little over an hour, Defendants Freeman, Herrera, Stertz, and McNulty selected Defendant Mathis to serve as IRC Chair.

25. Indeed, Mr. Mathis effectively became a "sixth commissioner" by closely counseling Defendant Mathis on every aspect of the redistricting process and the votes that were taken and interacting with stakeholders. Mr. Mathis attended virtually every public meeting of the IRC, often spoke with Democratic operatives during hearings, listened in on many conference calls among the IRC members, and acted on Defendant Mathis's behalf to round up votes on decisions coming before the IRC. Mr. Mathis even went so far as to propose a deal to establish legislative district boundaries under which the Democratic Commissioners would draw districts in southern Arizona and the Republican Commissioners would draw those in northern Arizona.

26. For someone constitutionally barred from service on the Commission, Mr. Mathis was allowed to have unprecedented involvement in and influence on the redistricting process.

TURMOIL SURROUNDS THE IRC'S PARTISAN DECISIONS

27. With the selection of Defendant Mathis as its chair, the IRC was fully constituted on March 1, 2011, and it almost immediately violated the Arizona Constitution. 9. After selecting a chair, Article 4, Part 2,

§ 1(9) of the Arizona Constitution mandates that "[t]he five commissioners shall then select by majority vote one of their members to serve as vice-chair."

28. But instead of complying with the constitution's mandate and despite the advice of counsel to the contrary, the IRC selected both Commissioners Herrera and Freeman to serve as co-vice-chairs.

29. After the appointment of the IRC's chairperson, the commissioners quickly polarized along party lines, with the chairperson, nominally an independent, siding with the Democratic members on every decision of any consequence.

THE DEMOCRATS AND INDEPENDENT SELECT REPUBLICAN COUNSEL

30. The alliance among Defendants Mathis, McNulty and Herrera first emerged with the selection of the IRC's legal counsel.

31. After discussion about the IRC's procurement authority and consultation with the State Procurement Office ("SPO") of the Arizona Department of Administration, the IRC Defendants decided to follow the state procurement code to retain legal services from one or more law firms.

32. On or about April 8, 2011, SPO issued a request for proposals ("RFP") for IRC legal services. Responses to the legal services RFP were due April 28, 2011.

Appendix F

33. ARIZ. CONST. art. 4, pt. 2, § 1(12) does not authorize the IRC to meet in anything but "a meeting open to the public, with 48 or more hours public notice provided." Nonetheless, the IRC met in closed sessions on May 3, 2011, for approximately 5.5 hours; May 6, 2011 (telephonically) for an undisclosed amount of time; and on May 10, 2011 for approximately 1.5 hours before selecting the law firms to be interviewed in public session on May 10, 2011.

34. On May 12, 2011, the IRC met in public session and interviewed six of the law firms that responded to the legal services RFP with the goal of procuring the services of a Republican and a Democratic attorney.

35. After at least two closed sessions on May 12, 2011, and May 13, 2011, totaling approximately two hours, Defendants Mathis, McNulty, and Herrera selected Osborn Maledon, P.A. (Democrat Mary O'Grady) and Ballard Spahr LLP (Republican Joseph Kanefield) as legal counsel. For more than 20 years, Mr. Kanefield had been a registered Democrat, and only switched to the Republican Party in 2010.

36. The Democratic Commissioners, Defendants McNulty and Herrera, and the Chairperson, Defendant Mathis, selected Republican counsel over the objections of the Republican Commissioners, Defendants Freeman and Stertz.

37. The selection of Republican counsel against the wishes of the Republican members of the IRC set

off a firestorm of controversy during public comment in subsequent meeting after meeting. In summary, this first glimpse of the coalition of Defendants Mathis, McNulty, and Herrera raised concerns that the selection of counsel would foreshadow this coalition's commitment to something other than the application of the constitutional provisions in an honest, independent, and impartial fashion and other than upholding public confidence in the integrity of the redistricting process.

THE DEMOCRATS AND INDEPENDENT SELECT A HIGHLY-PARTISAN DEMOCRATIC FIRM AS MAPPING CONSULTANT

38. Further concerns emerged concerning the outcome-oriented nature of the scoring of the responses to the RFP engaged in by at least one Commissioner who gave

* * *

39. Upon information and belief, Defendants Mathis, McNulty, and Herrera discussed matters involving the selection of legal counsel for the IRC, including having discussions that led to or were the equivalent of legal action, outside of properly noticed public meetings.

40. On or about June 15, 2011, the IRC Defendants met in public session to select four candidates to interview for the position of mapping consultant: Strategic Telemetry, National Demographics, Research Advisory Services, and Terra Systems Southwest. Before making their selection,

the IRC Defendants held one or more closed sessions to discuss the selection of a mapping consultant, including an almost five-hour closed session on June 15, 2011.

41. Following presentations by the candidates for mapping consultant on June 24, 2011, the IRC Defendants met in closed session to discuss the selection of the mapping consultant, and Defendants Mathis, McNulty, and Herrera all gave Strategic Telemetry perfect scores despite its complete lack of redistricting experience, its lack of even rudimentary knowledge of Arizona demographics and geographics, its submission of the most expensive proposal, and its being headquartered at the District of Columbia.

42. A copy of the July 1, 2011, Yellow Sheet Report, published by Arizona Capitol Reports, LLC, is attached as Exhibit 3 and is adopted herein by reference, and details the irregularities surrounding the selection of Strategic Telemetry as mapping consultant to the IRC. These irregularities were not limited to closed-session violations of Ariz. Const. art. 4, pt. 2, § 1(12), but also included destruction of public records, *i.e.* their initial scoring sheets, in violation of A.R.S. § 39-121.01.

43. Throughout this selection process, concerns were voiced about Strategic Telemetry's highly partisan, pro-Democratic resume. Strategic Telemetry advertised itself as a statistics and data analysis firm that caters to Democratic clients. Upon information and belief, as a Democratic campaign strategist, Strategic Telemetry's President, Ken Strasma, specialized in micro targeting

and is considered to be a pioneer in the use of high-tech statistical modeling in Democratic campaigns. In this vein, Mr. Strasma, served as the national target director for the 2008 Obama presidential campaign. His work for the 2008 Obama campaign included micro-targeting, a technique for identifying narrow niches of voters and targeting campaign communications to them. He also worked with the 2004 John Kerry presidential campaign. Most recently, he worked on efforts to recall Republican officials in Wisconsin, including Governor Scott Walker. Mr. Strasma also has a long history of making substantial monetary contributions to Democratic candidates. According to Federal Election Commission records, Mr. Strasma has contributed almost $15,000 to Democratic candidates in recent years. The fact that Strategic Telemetry is not a mapping firm was highlighted during and AIRC meeting in July 2011 when Strategic Telemetry indicated that its staff would need time to learn the software that is standard in the mapping industry.

THE DEMOCRATS AND INDEPENDENT DEFY THE OPEN MEETING LAW

44. Despite its lack of mapping experience, Strategic Telemetry's ability to go beyond voter registration to analyze voter behavior would allow it to carve out districts that might appear neutral but in fact would be solidly pro-Democrat districts. Commissioner Mathis lobbied other Commissioners to select Strategic Telemetry.

45. Before the selection of the mapping consultant, Defendant Mathis contacted Defendant Freeman on at

least one occasion to ask him to support the selection of Strategic Telemetry as the IRC's mapping consultant. Defendant Mathis presented a *quid pro quo* to Defendant Freeman, stating that "there might be times in the future where, you know, [you] need[] a third vote." (Attorney General Deposition of S. Freeman at 11:8-9, copy attached as Exhibit 4 and adopted herein by reference.) Defendant Freeman properly rejected Defendant Mathis's overture.

46. Before the selection of the mapping consultant, Defendant Mathis contacted Defendant Stertz on at least two occasions to ask him to support the selection of Strategic Telemetry as the IRC's mapping consultant. Defendant Mathis presented a *quid pro quo* to Defendant Stertz, stating that "if I were to vote with her in regards to the selection of Strategic Telemetry, she would provide a favorable vote for me in the future." (*See* 10/29/2011 Letter of R. Stertz to Governor Brewer at 2, a true copy of which is attached as Exhibit 5 and is adopted herein by reference.) Like Defendant Freeman, Defendant Stertz properly rejected Defendant Mathis's offer to exchange his vote in favor of Strategic Telemetry for the promise of a future vote from Defendant Mathis.

47. Before the selection of the mapping consultant, Defendant Herrera communicated with one or more other IRC Commissioners regarding which firm should be hired. According to remarks made during the June 29, 2011 public meeting, Mr. Herrera pretextually stated that his first choice was Research Advisory Services but further stated that "in a spirit of cooperation and negotiation," he decided "to support Strategic Telemetry."

48. Upon information and belief, before the selection of the mapping consultant, Defendant Mathis contacted Defendant McNulty on at least one occasion to ask her to support the selection of Strategic Telemetry as the IRC's mapping consultant.

49. On June 29, 2011, the IRC Defendants met to consider the mapping consultant RFP. Following a closed session with State Procurement officials, the IRC's counsel announced that SPO was no longer working on the mapping consultant procurement and that the project was now delegated to the IRC. Upon information and belief, SPO renounced any role in the process because the process clearly was diverging from long-standing principles of Arizona procurement law.

50. The IRC then proceeded to select Strategic Telemetry as its mapping consultant by a vote of 3-2, with the Mathis-McNulty-Herrera coalition voting yes, and Defendants Stertz and Freeman voting no.

51. In explaining her vote for Strategic Telemetry, Defendant Mathis read from remarks obviously prepared in advance of the meeting, which indicated advance knowledge of the outcome of the IRC's vote.

52. On information and belief, Defendants Mathis, McNulty, and Herrera coordinated their efforts to guarantee that Strategic Telemetry would be selected as the IRC's mapping consultant by, among other actions, agreeing that they each would award Strategic Telemetry a perfect score and engaging in various non-

public communications designed to garner a majority of Commissioners in advance of a public meeting. These *sub rosa* efforts to achieve majority consensus violated ARIZ. CONST. art. 4, pt. 2, § 1(12), which required all discussions and actions to hire a mapping consultant to occur in a public meeting. "Public officials may not circumvent public discussion by splintering the quorum and having separate or serial discussions with a majority of the public body members. Splintering the quorum can be done by meeting in person, by telephone, electronically, or through other means to discuss a topic that is or may be presented to the public body for a decision." Arizona Attorney General Agency Handbook at § 7.5.2, found at http://www.ag.state.az.us/Agency_Handbook/ch07.pdf.

53. Coming on the heels of the selection of legal counsel, the Mathis-McNulty-Herrera decision to hire the highly partisan Strategic Telemetry proved to be a flashpoint that irreparably damaged public confidence in the IRC. Subsequent IRC meetings featured scores of citizens expressing concerns about the ability of Strategic Telemetry to remain impartial. The transcript of the IRC's public meeting on June 30, 2011, reflects roughly 90 pages of public comments denouncing the selection of Strategic Telemetry and the criticizing the hack conduct of Defendant Mathis.

54. Additional concerns were raised about Defendants Mathis, McNulty, and Herrera discussing IRC business with each other outside of public meetings and about the IRC improperly conducting business during closed sessions.

55. On the morning of July 21, 2011, Attorney General Tom Horne announced an investigation of the IRC for alleged violations of Arizona's procurement rules and its open meeting law, which is codified at A.R.S. §§ 38-431.01 through 38-431.09.

56. As part of this investigation, the Attorney General issued Civil Investigative Demands ("CIDs") to all five Commissioners.

57. Commissioners Freeman and Stertz cooperated with the Attorney General's investigation and submitted to depositions under oath.

58. Defendants Mathis, McNulty, and Herrera each received separate legal counsel at the IRC's expense, which violated A.R.S. § 38-431.07(B), and each refused to cooperate with the Attorney General's investigation. The Attorney General sued these Commissioners in Maricopa County Superior Court to enforce the CIDs, Case no. CV2011-016442.

59. In response to the Attorney General's investigation, the IRC argued that it was subject only to ARIZ. CONST. art. 4, pt. 2, § 1(12)'s public meeting requirement and not the specific provisions of the open meeting law. But the Defendant IRC's own counsel provided training to the Commissioners on open meeting law compliance, noticed IRC meetings by citing to the open meeting law's provisions, and freely utilized the open meeting law's exception allowing the IRC to meet in closed sessions. What's more, if the IRC were only

subject to ARIZ. CONST. art. 4, pt. 2, § 1(12)'s public meeting requirements, it had no legal justification for the more than 40 hours spent in closed sessions.

60. The IRC brought a declaratory judgment and special action, case no. CV2011-017914, seeking in Maricopa County Superior Court to resolve the question of whether the IRC was subject to the open meeting law and to protect the IRC from what it argued was the Attorney General's attempt to interfere with the IRC's business.

61. The trial court ultimately removed the Attorney General from the investigation based on a conflict of interest arising from the Attorney General's representation of the IRC before the hiring of the IRC's legal counsel. The investigation was then transferred to the Maricopa County Attorney's Office. The trial court also determined that (a) the IRC is subject only to ARIZ. CONST. art. 4, pt. 2, § 1(12)'s public meeting requirement, and (b) that the IRC is not subject to the open meeting law. The Maricopa County Attorney's Office has appealed, and the matter is now pending in Division One of the Arizona Court of Appeals, No. 1 CA-CV 12-0068.

62. On information and belief, Defendants Mathis, McNulty and Herrera engaged in non-public communications to arrive at consensus among this majority of Commissioners and then took the position that they were not subject to Arizona's open meeting law in order to avoid the consequences of their conduct.

63. Early on, the stage thus was set for an outcome-driven redistricting instead of the process-driven redistricting guaranteed by the Arizona Constitution.

THE DEMOCRATS AND INDEPENDENT ABANDON THE CONSTITUTIONAL PROCESS

64. ARIZ. CONST. art. 4, pt. 2, §§ 1(14) – (16) require the IRC to perform its district-drawing work in four phases. *Arizona Minority Coalition for Fair Redistricting v. Arizona Independent Redistricting Commission*, 220 Ariz. 587, 597, ¶ 29, 208 P.3d 676, 686 (2009).

65. The first phase is the "creation of districts of equal population in a grid-like pattern across the state." *Id.* at ¶ 30 (internal quotation marks omitted.)

66. Second, the "Commission must make adjustments to the grid as necessary to accommodate the six constitutional goals." *Id.* at ¶ 31 (internal quotation marks omitted.)

67. Third, the IRC must advertise the maps for public comment for a period of 30 days. *Id.* at 598-99, ¶ 31, 208 P.3d at 687-88.

68. Fourth, "after the public comment period has ended, the Commission must establish final district boundaries and certify the new districts to the Secretary of State." *Id.* at 600, ¶ 44, 208 P.3d at 689.

69. On or about July 21, 2011, the IRC began to hold what it denoted as round-one public hearings in various locales around Arizona to take public input on mapping considerations.

70. The IRC concluded the round-one public hearings on or about August 6, 2011.

71. On August 18, 2011, the IRC considered two possible congressional grid maps and chose Grid Map No. 2. Although the constitution requires that the IRC begin the mapping process by creating "districts of equal population in a grid-like pattern across the state" before making any adjustments to accommodate the six constitutional goals, the IRC violated the constitution by considering factors other than equal population in creating the Congressional Grid Map. A true copy of the congressional grid map is attached as Exhibit 6, and is adopted herein by reference.

72. As reflected in the transcript of the IRC meeting of August 18, 2011, at 5:24-6:2, the IRC's adopted Congressional Grid Map was based not only on equal

* * *

73. In addition, instead of adopting a Grid Map that would serve as a neutral, unbiased starting point for redistricting, the IRC's Congressional Grid Map was adopted based on subjective considerations, including which Grid Map might be most likely to lead to a Commissioner's desired outcome in violation of ARIZ. CONST. art. 4, pt. 2 § 1(14). *See* Exhibit 7 at 6:24-51:19.

74. On August 18, 2011, the IRC approved its option 2 legislative grid map, thereby completing Phase 1 of its constitutionally-mandated work. A true copy of this grid map is attached as Exhibit 8, and is adopted herein by reference.

75. After approval of the grid maps, the IRC entered into Phase 2 of its constitutionally-mandated work, and began adjustments to the grid maps.

PHASE TWO MAP DRAWING, CONTINUED POLARIZATION, BOGGING DOWN, AND PARTIAL ABANDONMENT OF THE GRID MAP

76. The IRC again polarized around party lines, with the Democratic members proposing a series of legislative mapping iterations under the label of Legislative 9 Minority Districts Option 1, and the Republican members proposing a series of legislative mapping iterations under the label of Legislative 9 Minority Districts Option 2.

77. Similarly, on the congressional side, the Democratic members proposed a series of congressional mapping iterations under the rubric of River District, and the Republican members proposed a series of congressional mapping iterations under the rubric of Whole Counties.

78. In September 2011, the IRC began bogging down in its work on both the legislative and congressional sides.

79. As a result, on the week-end of September 24-25, 2011, Chairperson Mathis on her own at her home began to draw a congressional map, which she presented to the IRC at its meeting of September 26, 2011, under the label of the "Everything Map," the effect of which was to merge the River District Map and the Whole Counties Map outside of Maricopa County and to obliterate the grid map and leave a blank space in Maricopa County. This Map quickly became known as the donut-hole map.

80. The Chairperson then turned the task of filling in the blank space in Maricopa County to Commissioner McNulty.

81. It was apparent from this process that Ms. Mathis had (1) again sided with the Democratic members on the question of drawing the congressional map, and (2) in Maricopa County had forsaken the state constitutional command that the IRC begin with the grid map and make adjustments only for the six goals set forth in ARIZ. CONST. art. 4, pt. 2, § 1(14).

82. Abandoning the grid map in Maricopa County and turning the congressional map drawing within Maricopa County over to Commissioner McNulty brought a firestorm of public criticism down upon the chairperson.

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ADOPTION OF DRAFT MAPS WITH NO GENUINE EFFORT TO SATISFY THE VOTING RIGHTS ACT

83. On October 3, 2011, a three–person majority of the IRC, composed of Chairperson Mathis and Democratic members McNulty and Herrera, approved a congressional draft map to be published for 30-day comment.

84. The IRC then turned to the legislative maps. To defuse the criticism of partisanship surrounding her obliteration of the grid map in Maricopa County on the congressional side and turn over of the line drawing in Maricopa County to Commissioner McNulty, Chairperson Mathis initially drew Commissioner Freeman in to join Commissioner McNulty in drawing legislative districts.

85. On October 10, 2011, the IRC approved a draft legislative map, a true copy of which is attached as Exhibit 9 and is adopted herein by reference.

86. A racial bloc voting analysis is an essential and critical element to satisfying the requirements of sections 2 and 5 of the Voting Rights Act. Without a racial bloc voting analysis it is impossible to know whether any redistricting plan complies with the Voting Rights Act.

87. By the time the IRC had approved its draft legislative map, it had not conducted a racial bloc voting analysis of either the congressional or the legislative map.

88. As a result, the IRC's purported effort to comply with the Voting Rights Act was incomplete, and its implicit representation to the public that its draft legislative map complied with the Voting Rights Act was fraudulent by material omission.

89. What's more, by the time the IRC had approved its draft legislative map, it had not obtained all of its data on the competitiveness goal, and thus could not have determined whether either the congressional or legislative maps satisfied the competitiveness criterion of ARIZ. CONST. art. 4, pt. 2, § 1(14)(F).

90. As a result, the IRC also failed to afford the Legislature a genuine 30-day comment period, as required by ARIZ. CONST. art. 4, pt. 2, § 1 (16).

ROUND TWO HEARINGS AND COMMENT FROM THE LEGISLATURE

91. Beginning on October 11, 2011, the IRC commenced a series of public hearings on the draft maps, and such hearings continued until November 5, 2011.

92. Acting pursuant to the authority conferred on it by ARIZ. CONST. art. 4, pt. 2, § 1(16), on November 1, 2011, the Arizona Legislature approved House Concurrent Memorial 2001 (50th Leg. 4th Sp. Sess.) to the IRC commenting on the draft maps and cautioning the IRC that, among other things, (a) the draft legislative map likely would violate the one-person/one-vote rule of the Fourteenth Amendment and the equal population

requirement of ARIZ. CONST. art. 4, pt. 2, § 1(14)(B), (b) the IRC had not performed a racial bloc voting analysis and therefore could not have made any genuine determination that the legislative draft map complied with the Voting Rights Act, (c) the minority voting-age population in some districts exceeded 60%, while in adjacent districts barely exceeded 50%, (d) the draft legislative districts failed to respect communities of interest in at least 13 instances, and failed to respect city, town, and county lines in multiple instances, (e) it appeared from the packing of Republican incumbents into several districts that the IRC had to have considered the residence locations of incumbents, which violated ARIZ. CONST. art. 4, pt. 2, § 1(15), and (f) the IRC had not complied with the 30-day comment requirement of ARIZ. CONST. art. 4, pt. 2, § 1(16), because the IRC had neither the essential racial bloc voting analysis nor complete competitiveness information when it approved the draft maps and therefore the maps were incomplete when published to the public. A true copy of the Legislature's memorial is attached as Exhibit 10, and is adopted herein by reference.

THE GOVERNOR'S REMOVAL OF THE CHAIRPERSON

93. Concerned about the IRC's patent violation of the map-drawing process provided by ARIZ. CONST. art. 4, pt. 2, §§ 1(14) — (16), the Governor gave notice to the IRC chairperson and members of such violations, and requested a response by October 31, 2011. A true copy of the Governor's notice letter is attached as Exhibit 11, and is adopted herein by reference.

94. Finding the response of the Chairperson inadequate, on November 1, 2011, the Governor announced her intent to remove Chairperson Mathis, and called a special session of the Arizona Legislature for the purpose of obtaining concurrence from the Arizona Senate.

95. On November 1, 2011, the Arizona Senate concurred with the Governor's removal of the Chairperson by a two-thirds majority.

96. The IRC filed a special action petition in the Arizona Supreme Court to reverse the Governor's removal of Chairperson Mathis, the Arizona Supreme Court accepted jurisdiction, and by order dated November 17, 2011, the Arizona Supreme Court reversed the removal and ordered Chairperson Mathis reinstated to her office at the IRC. The opinion supporting the order is *Arizona Independent Redistricting Com'n v. Brewer*, —- P.3d ——, 2012 WL 1366362, 632 Ariz. Adv. Rep. 32 (Ariz., April 20, 2012).

ALL PRETENSE OF IMPARTIALITY IS ABANDONED.

97. With her hand strengthened by the Arizona Supreme Court's reversal of her removal, Chairperson Mathis and the two Democratic members of the IRC abandoned all pretense of impartiality and proceeded to maximize the advantages in the legislative map to the Democratic Party.

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98. The IRC gave no consideration to the recommendations of the Legislature in violation of the Article 4, Part 2, § 1(16) of the Arizona Constitution.

99. The Legislative recommendations were placed on the Commission's November 29, 2011 agenda. At that meeting, Commission attorney Mary O'Grady advised the Commissioners that the Legislative recommendations were in the packet of materials provided to each Commissioner for their review. Ms. O'Grady stated, "I don't know that it makes sense now to sort of read through [the Legislature's recommendations], but maybe commit it to the Commission to makes [sic] sure that you review those. And as the mapping process proceeds, you may want to – you can take those into account as the work goes on." She also stated that the Commission "might want to consider" the Legislature's comments and that "if the Commission is concerned about anything [raised by the Legislature], they can consider those as they propose recommended changes to the draft map." (Tr. 11-29-11 at 144:18-146:22).

100. Defendant Herrera stated his understanding of Ms. O'Grady's advice. "I think as Ms. O'Grady said, we're free to read this information and take it into account when we are making changes to the draft map. So I think she was pretty clear." Tr. 11-29-11 at 148:12-15.

101. The Commission merely made a record that it had received House Concurrent Memorial 2001, which is insufficient to satisfy the constitutional requirement that the Commission "consider" the recommendations of the Legislature. Tr. 11-29-11 at 145:9-16.

102. The Commission treated its responsibility to consider the Legislative recommendations as discretionary in violation of Ariz. Const. art. 4, pt. 2, § 1(16).

103. At no time did a quorum of the Commission consider acting upon the Legislature's recommendations, in whole or in part, and never considered accepting or rejecting any or all of its recommendations. On information and belief, the Commission ignored the Legislature's recommendations and, by doing so, ignored the constitutional requirement that it consider them.

104. In a series of IRC meetings beginning on November 29, 2011, and ending on January 17, 2012, the IRC's Democrat-polarized majority made numerous changes in the draft legislative map, which can be summarized as follows:

District	Changes
1	Lost Camp Verde, and added New River, Cave Creek, Carefree, and Anthem
2	Lost Cochise County, and added Green Valley and more of Tucson
3	Added part of Marana and Democratic State Senator Cajero Bedford's house
4	Lost part of Yuma to Legislative District 13
5	Added the Arizona strip north of the Grand Canyon
6	Added Camp Verde and Grand Canyon Village, and lost Show Low and Linden

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7	Lost the Arizona Strip and added Show Low and Linden
8	Lost east Tucson foothills and Saddlebrook, and added Eloy and part of Casa Grande
10	Added southeastern Tucson
11	Lost Eloy, Casa Grande, and the Gila River reservation, and added the east Tucson Foothills
12	Added Queen Creek in Pinal County
13	Added northwest Maricopa County, including Buckeye and Wickenburg, and part of Yuma, and lost part of Surprise
14	Added Greenlee County and a portion of Cochise County, and lost part of Tucson
15	Added Phoenix west of I-17, and Lost Phoenix south of Union Hills
20	Added eastern Glendale
21	Added a portion of Surprise
23	Gained the Ft. McDowell Reservation
24	Lost northeastern Scottsdale and the Salt River Reservation
26	Gained northeastern Scottsdale and the Salt River Reservation
27	Gained the Gila River Reservation

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ADOPTION OF THE FINAL LEGISLATIVE MAP

105. On January 17, 2012, the IRC Democratic-polarized majority approved a final legislative map over the vigorous dissents of the two Republican members.

106. As reflected in the comments of Vice-Chairperson Freeman and Commissioner Stertz at the IRC meeting of January 17, 2012, the final map was stripped of all input from the Republican members and was a purely Democratic map with only pretextual effort to satisfy the six state-constitutional goals set forth in ARIZ. CONST. art. 4, pt. 2, § 1(14).

THE IRC SYSTEMATIC OVERPOPULATES REPUBLICAN-PLURALITY DISTRICTS AND UNDERPOPULATES DEMOCRATIC-PLURALITY DISTRICTS

107. In the final congressional map adopted by the IRC on January 17, 2012, the IRC achieved equality of population among districts, with eight of the nine congressional districts having a population of 710,224 residents, and the ninth district having a population of 710,225 residents. A true copy of the IRC's population break-down for the final congressional map is attached as Exhibit 12, and is adopted herein by reference.

108. In contrast, in the Final Legislative Map, the IRC did not achieve population equality among districts, and not even a single district achieved the ideal population of 213,067 residents. A true copy of the IRC's population

break-down for the Final Legislative Map is attached as Exhibit 13, and is adopted herein by reference.

109. The IRC systematically overpopulated Republican-plurality districts. (As used herein, "Republican-plurality district means a legislative district in which more voters are registered with the Republican Party than with any other party, and "Democratic-plurality district" means a legislative district in which more voters are registered with the Democratic Party than with any other political party.)

110. With one exception, every Republican-plurality district exceeds the ideal population of 213,067 residents. These include Districts 1, 5, 6, 11, 12, 14-18, 20-23, 25, and 28. The exception is District 13, which is an oddly-shaped district comprising northern Yuma County and western Maricopa County and is under-populated by 1,366 residents or 0.64% below ideal. A true copy of the IRC's legislative-district party-registration break-down is attached as Exhibit 14, and is adopted herein by reference.

111. Two Republican-plurality districts are more than 8000 persons above population equality: District 12 at 8668, and District 17 at 8107. Two are more than 7000 persons over: District 25 at 7728, and District 16 at 7090. Four are more than 5000 persons over: District 5 at 5973, District 28 at 5646, District 18 at 5100, and District 20 at 5100. District 14 is 4626 persons over. On average, the 16 overpopulated Republican-plurality districts exceed the ideal by 4480 persons or 2.1%.

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112. All of the 14 most overpopulated districts are Republican. All of the 12 under-populated districts, save one (District 13) are Democrat. The four remaining districts are all over-populated by less than 0.30%. Of them, Districts 9 and 26 are Democrat-plurality, and Districts 11 and 23 are Republican-plurality.

113. The IRC systematically under-populated Democratic-plurality districts. With two exceptions, every Democratic-plurality district falls short of the ideal population of 213,067 persons. These include Districts 2-4, 7, 8, 10, 13, 19, 24, 27, 29, and 30. The two exceptions are District 9, which comprises north Tucson and Oro Valley, and District 26, which comprises much of Tempe. These districts are slightly overpopulated from the ideal, respectively by 156 and 591 persons, or by 0.07% and by 0.28%.

114. Thus, eighty-nine percent of the overpopulated districts are Republican and ninety-two percent of the under-populated districts are Democrat.

115. One Democratic-plurality district — District 7 — falls below population equality by 10,041 persons. Four Democratic-plurality districts fall below by more than 8000 persons: District 4 at 8924, District 27 at 8872, District 3 at 8454, and District 2 at 8452. Three more fall below by more than 5000 persons: District 24 at 6408, District 19 at 5979, and District 30 at 5304. District 8 falls below ideal by 4645 persons. On average, the 11 under-populated Democratic-plurality districts fall short of the ideal by 6461 persons or 3.03%.

116. District 7, the only Native American legislative district in the State, falls below population equality by 4.71 percent, the largest absolute deviation in the plan. District 7 is also. Four Democrat districts fall below by more than 3.5 percent: District 4 at 4.19 percent, District 27 at 4.16 percent, and Districts 3 and 2 at 3.97%. Four more fall below by more than 2 percent: District 24 at 3.01 percent, District 19 at 2.81 percent, District 30 at 2.49 percent, and District 8 at 2.18%.

117. On average the 11 under-populated Democrat districts fall short of the ideal by 3.03%. This high average population deviation indicates that an abnormal number of these districts are under-populated and, indeed, overpopulated in excess of 3%. If the IRC had been drawing with equal population as a principal criterion, most of the districts would be expected to be within +/-1% of the ideal. Only nine of the IRC's 2011 districts are that close. If the IRC had used neutral redistricting criteria as its guiding principle in drawing the map, one might see some population deviations higher than one percent, but the pattern of district deviations would not correlate with partisanship to anywhere near the extent seen in the IRC's plan. The only logical explanation is that the IRC's pattern of deviations was deliberate and intended to have a partisan effect to enhance Democrat strength in the Legislature.

118. Exhibit 17, adopted herein by reference, contains a bar chart showing the amplitude of deviation of each district with each district's bar colored according to party registration plurality. The bars colored green are the

districts with Democrat pluralities, while the red bars are Republican.

NO LEGITIMATE STATE INTEREST JUSTIFIES THE IRC'S VARIANCE FROM IDEAL

119. Having achieved exact equality among congressional districts, the IRC had the technical ability to achieve exact equality among legislative districts, and under the circumstances of this action, no legitimate state interest justifies the IRC's variation from exact equality.

120. The technology of demographics has evolved to the point that demographers, assisted by computer science, are capable of drawing legislative districts of precisely equal population. They are also capable of using this same technology to create intentional and arbitrary deviations from the ideal population in order to attain partisan and other political gains. The IRC 2011 Legislative Plan's range of district deviations from +4.07% to -4.71% is remarkably and unnecessarily wide, given the large ideal district population and the absence of any rational state criteria requiring such a wide range of deviation.

121. The IRC was able to create congressional districts of equal population, even when taking into account the Voting Rights Act's requirements for majority-minority districts.

122. Another way to measure district deviations is in terms of the difference between the most and least

populous district called top-to-bottom, overall range or total deviation. For the Final Legislative Plan, total deviation would be calculated by taking the percentage deviation of most populous district, District 10 at +4.07%, and adding to it the percentage deviation of the least populous district, District 7 at -4.71%. Those two percentages are added together without the negative sign (absolute value) to yield a overall deviation range (or total deviation) of 8.79%.

123. In the Final Legislative Plan, the deviation from ideal exceeded 2% in 18 districts. The Final Legislative kept district deviations within 2% for only 12 districts and within 1% for only 9 districts. In contrast, the California Citizens Redistricting Commission constructed all 40 state senate districts within a total deviation of 2% and with 12 of 40 districts with 1%. Other states such as Florida, Georgia, Iowa, Minnesota and Nevada were able to keep their state senate district plan total deviations below 2%. Indiana, Oregon and Virginia drew theirs below 4%.

124. Had the IRC properly followed the criteria for drawing districts mandated by ARIZ. CONST. art. 4, pt. 2, § 1(14), or the neutral criteria recognized as justifying a deviation in legislative districts from ideal population, the IRC could not have made all but one Republican-plurality district over-populated and all but two Democrat-plurality districts under-populated. That such results occurred by chance defies all logic and probability.

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VOTING RIGHTS COMPLIANCE DOES NOT JUSTIFY THE VARIANCE

125. According to the Census Bureau, the Hispanic portion Arizona's population increased from 25.3% in 2000 to 29.6% in 2010. According to the results of the U. S. Census Bureau's 2010 release of the American Community Survey ("ACS"), Hispanics citizens of voting age comprise 17.89% of Arizona's total citizen voting age population.

126. The Final Legislative Map contained what purported to be no more than seven districts in which Hispanic qualified electors could elect the candidates of their choice, which represented no net increase from 2000 to 2010, despite the significant increase in Arizona Hispanic population from 2000 to 2010. These are Districts 2, 3, 4, 19, 27, 29, and 30. A true copy of the IRC's voting-age population break-down for the Final Legislative Map is attached as Exhibit 15, and is adopted herein by reference. The IRC has labeled these "Hispanic opportunity districts."

127. The following chart shows the Hispanic voting-age population ("HVAP") of the seven districts according to the IRC population breakdowns. The chart also shows the Hispanic citizen voting age population ("HCVAP") of the seven districts.

Legislative District	Percentage HVAP	Percentage HCVAP
2	52.8%	41.29%

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3	50.1%	43.59%
4	55.7%	45.38%
19	60.4%	46.26%
27	52.1%	39.82%
29	61.9%	43.88%
30	50.7%	33.01%

128. The correlation between the under-populated districts and the minority percentages in those districts is stronger than the partisan deviation correlation. A chart demonstrating this pattern is contained Exhibit 18, adopted herein by reference. The five most under-populated districts in the IRC's 2012 map are also five of the districts which the IRC labeled "minority opportunity districts." One of these districts is Native American and the other four are Hispanic. All seven of the IRC's Hispanic opportunity districts are under-populated. The ten most under-populated districts in the IRC's 2012 map all have a total voting age minority populations in excess of 50% (or less than 50% non-Hispanic adult whites). Only one additional legislative district has a voting age minority population in excess of 50%. That is District 26, which has a population only .28% over the ideal.

129. It was totally unnecessary for the IRC to create such high deviations, or patterns of deviations, to draft the Hispanic opportunity districts at the HVAP found in the Final Legislative Map. The collective under-population of the IRC's seven Hispanic districts is 32,588 persons from what it would have been if all the districts were draw at the ideal population.

130. Yet there are a number of whole or split precincts on the boundaries of the IRC's seven Hispanic opportunity districts persons which have very high percentages of Hispanic adults and contain about 87,500 persons. These seven districts could have been drafted at or above the ideal district population with the same or higher level of HVAP. Thus, the IRC deliberately separated these highly Hispanic precincts from the IRC's seven Hispanic opportunity districts to use their Democratic votes to shore up the partisan composition of neighboring Democrat-plurality districts, and or to directly or indirectly weaken Republican-plurality districts.

131. This is also true for Legislative District 7, which the IRC drew with a Native American voting age population ("NAVAP") of 63.1%. This district can be drawn with a population deviation of .02% with a NAVAP of 61.0%, more than enough to qualify this as a Native American majority district and to satisfy both sections two and five of the Voting Rights Act.

132. The Benchmark Plan, or the IRC's Legislative Plan adopted and pre-cleared in 2003, contains only two districts in which the Hispanic candidates have been consistently elected to both the one state senate and two state house seats in each of these districts. The first is Benchmark District 13, in Maricopa County (West Phoenix, Central Avondale, and Tolleson, which has a Hispanic Citizen Voting Age Percentage ("HCVAP") of 51.50% and an HVAP of 68.27%. The second is Benchmark District 27, Pima County (primarily the west side of Tucson), which has an HCVAP of 43.67% and an HVAP of

49.89. Benchmark Districts 14 and 16 also have HCVAP percentages in the mid-forty percent range. Benchmark District 14 has an HCVAP of 44.27% and an HVAP of 64.90%, while Benchmark District 16 has an HCVAP of 44.27% and an HVAP of 56.74. Benchmark District 16 also has an African-American Citizen Voting Age Population of over 18% - by far the highest in any legislative district. Benchmark District 14 elects primarily non-Hispanic white candidates while Benchmark District 16 elected either Hispanic or African-American candidates in the last 5 previous elections.

133. The IRC could have drawn at least four majority HCVAP districts and at least one more majority minority CVAP district. The IRC decided instead to create seven weak Hispanic districts, only two of which had HCVAPs above the HCVAP of Benchmark District 27. Even worse, District 29, the successor district to Benchmark District 13, had its HCVAP reduced from 51.50% to 43.88%.

134. The IRC had the opportunity to draw these seats with HCVAP extremely close to or over 50%, but it declined to do. Three of these districts could have been in Maricopa County, one in Pima County and one running along the State's southern border from Yuma to Nogales. Instead, the IRC elected to create seven weaker seats.

135. To create the Democrat-plurality legislative districts with negative population deviations, including the minority districts, the IRC moved substantial numbers of Hispanic voters into neighboring non-Hispanic white Democrat districts to shore up the Democrats' partisan

advantage in such districts. Had the IRC followed the Voting Rights Act and ARIZ. CONST. art. 4, pt. 2, § 1(14), it would have moved the Hispanic voters around the boundary of the seven Hispanic districts to raise the percentage of Hispanic voters in those districts and give the Hispanic community an equal opportunity to elect more candidates of its choice. The IRC refused to do so for the sole reason of increasing the Democrat percentages of the vote in the districts adjacent to these seven districts.

136. In fact, the IRC engaged in intentional invidious dilution of Hispanic voting strength throughout the map. The IRC systematically spread Hispanic Democrats into predominantly non-Hispanic white Democrat districts to increase the strength of Democratic registration pluralities in them.

137. What's more, no correlation exists between satisfying Voting Rights Act section 5 and these districts' under-populations. Specifically, no significant improvement in minority VAP occurred in the VRA districts between the draft map and the final map. District 2 HVAP dropped by 9.6%. HVAP in Districts 3 and 27 marginally declined. HVAP marginally improved in Districts 4, 19, and 29. Native American VAP increased marginally in District 7. Yet the IRC's under-population of all these districts significantly worsened:

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Dist.	Population	Deviation from Ideal	Population Change	Draft VAP %	Final VAP %	VAP Change
2	Draft 212,863 Final 204,615	Draft -204 Final -8452	↓8248	61.4%	52.8%	↓9.6%
3	Draft 210,016 Final 204,613	Draft -3051 Final -8454	↓5403	51.2%	50.1%	↓1.1%
4	Draft 214,082 Final 204,143	Draft +1014 Final -8924	↓9938	53.7%	55.7%	↑2.0%
19	Draft 212,096 Final 207,088	Draft -971 Final -5979	↓5008	60.0%	60.4%	↑0.4%
27	Draft 208,413 Final 204,195	Draft -4654 Final -8872	↓4218	53.7%	52.1%	↓1.6%

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29	Draft 212,258 Final 211,067	Draft -809 Final -2000	↓1191	61.7%	61.9%	↑0.2%
30	Draft 207,918 Final 207,763	Draft -5149 Final -5304	↓155	50.7%	50.7%	---
7	Draft 210,314 Final 203,026	Draft -2753 Final -10,041	↓7288	61.9%	63.1%	↑1.2%

138. Thus, compliance with the Voting Right Act is no rationale for the IRC's violation of the equal population standard. The IRC weakened the ability of the Hispanic community to elect Hispanic candidates of their choice in order to elect more non-Hispanic white Democrats.

139. By letter dated April 26, 2012, the Department of Justice declined to interpose any objection to the Final Legislative Map. The April 26, 2012, letter, however, stated that "we note that Section 5 expressly provides that failure of the Attorney General to object does not bar subsequent litigation to enjoin the enforcement of the change." Despite the DOJ letter, these are inadequate HCVAP percentages to ensure that Hispanic electors could elect candidates of their choice, and therefore violate the anti-retrogression requirement of Section 5 of the Voting Rights Act.

140. An analysis of the retrogression of Final Legislative Map in terms of HCVAP is attached as Exhibit 16, and is adopted herein by reference. The analysis reveals that the IRC majority of Ms. Mathis, Mr. Herrera, and Ms. McNulty deliberately diluted the voting strength of Hispanic voters to protect Democratic-plurality districts. It shows that the following new legislative districts retrogressed from the benchmark districts by significant percentages of CVAP:

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New Legislative District	Percentage HCVAP Retrogression from the Benchmark District
3	0.08 -
19	5.24 -
27	3.29 -
29	7.62 -
30	11.26 -

141. Such retrogressions could not have taken place had the IRC built the Hispanic districts first, as is the common approach to adhere to the requirements of Section 5, and as was required by ARIZ. CONST. art. 4, pt. 2, §§ 1(14) and 1(16) before it could publish the legislative draft map for the 30-day comment period of Phase Three.

142. The true nature of these districts is revealed by the candidates who filed for office in them. The Secretary of State's records indicate that the candidates who filed by the deadline for the Democratic nominations for state Senate from District 24 are former Senator Ken Cheuvront and Katie Hobbs and for the state House are incumbents Chad Campbell and Lela Alston as well as Jean Cheuvront-McDermott and Tom Nerini. From District 26, they are Ed Ableser for the Senate, and Andrew Sherwood and Juan Mendez for the House. *See* Secretary of State's 2012 Primary Election full listing, found at http://www.azsos.gov/election/2012/Primary/FullListing.htm. Given these are at most influence districts, it is no surprise that only one Hispanic is running in them.

143. It would not have been necessary for the IRC's mapping consultant Strategic Telemetry to use partisan election results to understand exactly what was being done here. Factoring in the effect of under-population of both the Hispanic and adjacent Democratic-plurality districts, coupled with ethnic fragmentation, creates a deliberate and classic gerrymander.

144. Thus, these facts show that the IRC could have made up these districts' shortfalls with minor adjustments in district lines, but chose not to do so to benefit Democratic incumbents or to increase the number of Democratic-plurality districts.

145. What is worse, to the extent the IRC eventually obtained a racial bloc voting analysis, the analysis made no study of the cohesiveness of minority voters, and made no study of the likelihood of white cross-over voting, and therefore was incapable of determining the percentage of CVAP it needed in purportedly Hispanic districts to create an effective Hispanic district, meaning a district in which the Hispanic electors could elect the candidate of their choice, and therefore was also incapable of determining whether it satisfied either Sections 2 or 5 of the Voting Rights Act.

146 What is worse yet, the analysis's sampling of elections was so limited as to cripple its effectiveness and usefulness. Specifically, the racial bloc voting analysis made no study of primary elections, made no study of endogenous elections, meaning actual legislative elections, and limited its focus to exogenous elections, meaning

elections for offices other than the Arizona House of Representatives or Arizona Senate. Because of these deficiencies, the racial bloc voting analysis was essentially useless for determining compliance with sections 2 and 5 of the Voting Rights Act.

147. The only possible explanation for these facts is that the individuals who were drawing the maps for the Arizona Commission were engaged in intentional political gerrymandering. Their method for accomplishing this was to dilute the Hispanic voting strength as much as was politically possible so that they could use these Hispanic Democrats to shore up non-Hispanic white Democratic candidates. The Commission then raised up the Hispanic Democrat percentages for this purpose by under-populating the Hispanic districts. The Commission then artificially increased Democrat electoral strength even more by under-populating the non-Hispanic white Democrat districts so that fewer Democrat votes were necessary in order to control these districts. This fact was still further enhanced by removing Republican voters from these under-populated non-Hispanic white Democrat districts and placing them in highly Republican and massively overpopulated districts.

RESPECTING THE COMPETITIVENESS GOAL DOES NOT JUSTIFY THE VARIANCE FROM EQUALITY

148. In 2002, the IRC final legislative map achieved six competitive districts, in which a candidate of either party with a reasonably well-run campaign had a chance of winning election.

149. In 2012, the IRC retrogressed and achieved only three competitive districts. These include Districts 9, 10, and 18.

150. As a result, respecting the competitiveness goal did not justify the deviations from equality in the Final Legislative Map.

RESPECTING THE NEUTRAL GOALS DOES NOT JUSTIFY THE VARIANCE FROM EQUALITY

151. Respecting city, town, and county boundaries, undivided census tracts, and communities of interest did not justify the IRC's deviation from equality among legislative districts.

152. The Final Legislative Map split five of Arizona's 15 counties twice, and split five counties more than twice. The Final legislative Map left only five counties in a single district. A true copy of the IRC's splits report is attached as Exhibit 19, and is adopted herein by reference.

153. The Final Legislative Map split three of Arizona's Indian reservations twice, and split four reservations more than twice.

154. The Final Legislative Map split the City of Glendale among seven districts, the City of Peoria among five districts, the City of Mesa among five districts, the City of Tempe among three districts, the City of Surprise among three districts, the City of Scottsdale among three

districts, the City of El Mirage among three districts, and the City of Chandler among three districts.

155. Respecting boundaries of counties, cities, towns, reservations, communities of interest, and undivided census tracts did not require the high deviations contained in the Final Legislative Plan.

156. Similarly, neither compactness nor contiguity bears any relation to the IRC's deliberate overpopulation of Republican districts and under population of Democrat districts.

157. Based on the foregoing, the IRC has no valid reason for its violation of the one-person, one vote rule of the United States Constitution or the equal population requirement of the Arizona Constitution.

FIRST CLAIM FOR RELIEF

158. Plaintiffs adopt herein by reference all allegations of all preceding paragraphs.

159. The one-person/one-vote requirement of the equal protection clause of the Fourteenth Amendment does not permit legislative districts to deviate from the ideal population except when justified by a compelling state interest. A plan with legislative districts that do not exceed the ideal population by more than five percent over or five percent under the ideal is presumed not to violate the one-person/one vote requirement of the equal protection clause of the Fourteenth Amendment, but the

presumption of constitutionality is rebuttable. *Larios*, 300 F.Supp.2d at 1341.

160. Not compelled or justified by any legitimate state interest, such as compliance with the Voting Rights Act, or the neutral districting criteria, the IRC's systematic overpopulating of Republican-plurality districts and systematic under-populating of Democratic-plurality districts was arbitrary and discriminatory, denied Plaintiffs, and each of them, their rights to equal protection of the laws guaranteed by the Fourteenth Amendment to the United States Constitution, and deprived them of "rights, privileges, or immunities secured by the Constitution and laws" of the United States, in violation of 28 U.S.C. § 1983. *Larios*, 300 F.Supp.2d at 1341.

161. The constitutional defects in the Final Legislative Map are so comprehensive that the IRC will have no choice but to abandon the Final Legislative Map and begin anew.

162. Because this is an action to enforce 28 U.S.C. § 1983, Plaintiffs are entitled to an award of attorneys' fees under 28 U.S.C. § 1988 against the IRC.

163. Plaintiffs therefore are entitled to judgment declaring that the Final Legislative Map violates the equal protection clause of the Fourteenth Amendment, and 28 U.S.C. § 1983, and thereby injures Plaintiffs, and each of them, and is null and void, enjoining Defendants and each of them from implementing or enforcing the Final Legislative Map, mandating that the IRC draft a new map for legislative elections following the 2012 elections,

and awarding Plaintiffs reasonable attorneys fees under 28 U.S.C. § 1988 against the IRC.

SECOND CLAIM FOR RELIEF

164. Plaintiff adopts herein by reference all allegations of all preceding paragraphs.

165. This claim is so related to the First Claim for Relief that it forms part of the same case or controversy under Article III of the United States Constitution, and this Court has jurisdiction of it under 28 U.S.C. § 1367.

166. ARIZ. CONST. art. 4, pt. 2, § 1(14)(B) requires the IRC to draw legislative districts with equal population to the extent practicable.

167. The IRC could have drawn legislative districts that achieved the ideal population had it wanted to do so, just as it did with congressional districts.

168. To do so, however, would have prevented the McNulty/Herrera/Mathis bloc from maximizing the number of Democratic-plurality districts. As a result, the McNulty/Herrera/Mathis bloc deliberately defied the equal population requirement of ARIZ. CONST. art. 4, pt. 2, § 1(14)(B) for the sole purpose of maximizing the partisan interests of the Democratic Party.

169. The Final Legislative Map therefore violates the equal population requirement of ARIZ. CONST. art. 4, pt. 2, § 1(14)(B), and thereby injures Plaintiffs, and each

of them, and is null and void.

170. This is an action to compel the members of the IRC, all of whom are state officers, to perform an act imposed by law as a duty on the them, and Plaintiffs therefore are entitled to an award of reasonable attorneys' fees and other expenses as provided for in A.R.S. § 12-2030 against the IRC and its members in their official capacities.

171. Plaintiffs therefore are entitled to judgment declaring that the Final Legislative Map violates the equal population requirement of ARIZ. CONST. art. 4, pt. 2, § 1(14)(B), and therefore is null and void, enjoining Defendants and each of them from implementing or enforcing the Final Legislative Map, mandating that the IRC draft a new map for legislative elections following the 2012 elections, and awarding Plaintiffs reasonable attorneys fees and other expenses as provided for in A.R.S. § 12-2030 against the IRC.

DEMAND FOR JUDGMENT

Plaintiffs respectfully demand that the Court award it the following relief against all defendants:

A. Declaring that the Final Legislative Map violates the equal protection clause of the Fourteenth Amendment, and 28 U.S.C. § 1983, and the equal population requirement of ARIZ. CONST. art. 4, pt. 2, § 1(14)(B), and thereby injures Plaintiffs, and each of them, and is null and void;

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B. Enjoining Defendants and each of them from implementing or enforcing the Final Legislative Map,

C. Mandating that the IRC draft a new map for legislative elections following the 2012 elections, and

D. Awarding Plaintiffs such other relief as is just, proper, or equitable under the facts and circumstances of this case.

Plaintiffs further respectfully demand that the Court award it the following relief against the IRC only: an award of reasonable attorneys' fees under 28 U.S.C. § 1988 and A.R.S. § 12-2030, and an award of other expenses under A.R.S. § 12-2030.

RESPECTFULLY SUBMITTED ON November 16, 2012.

APPENDIX G — ANSWER TO PLAINTIFFS' SECOND AMENDED COMPLAINT IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF ARIZONA, FILED DECEMBER 3, 2012 BY DEFENDANTS ARIZONA INDEPENDENT REDISTRICTING COMMISSION AND COMMISSIONERS MATHIS, MCNULTY, HERRERA, FREEMAN, AND STERTZ SOLELY IN THEIR OFFICIAL CAPACITIES

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

No.: 2:12-CV-00894-ROS-NVW-RRC

Wesley W. Harris, *et al.*,

Plaintiffs,

vs.

Arizona Independent Redistricting Commission, *et al.*,

Defendants.

ANSWER TO PLAINTIFFS' SECOND AMENDED COMPLAINT

(ASSIGNED TO THREE-JUDGE PANEL)

For their Answer to Plaintiffs' Second Amended Complaint (the "Complaint"), Defendants Arizona Independent Redistricting Commission and Commissioners

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Mathis, McNulty, Herrera, Freeman, and Stertz solely in their official capacities (collectively, the "Commission") admit, deny, and allege as follows. Any allegation not specifically admitted in this Answer is denied.

1. Answering Paragraph 1 of the Complaint, the Commission admits that Arizona voters passed Proposition 106 as an amendment to the Arizona Constitution. The Commission denies the remaining allegations made in that paragraph.

2. Answering Paragraph 2 of the Complaint, the Commission admits that it is a synopsis or summary of Plaintiffs' claims. The Commission denies the remaining allegations made in that paragraph.

3. Answering Paragraph 3 of the Complaint, the Commission admits that Plaintiff Wesley Harris is a member of the Republican Party. The Commission lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations made in that paragraph and therefore denies them.

4. Answering Paragraph 4 of the Complaint, the Commission lacks knowledge or information sufficient to form a belief as to the truth of the allegations regarding Plaintiffs' residences and therefore denies them. The Commission denies the remaining allegations made in that paragraph.

5. Answering Paragraph 5 of the Complaint, the Commission asserts that the cited portions of the Arizona Constitution speak for themselves.

6. Answering Paragraph 6 of the Complaint, the Commission admits the allegations made in that paragraph.

7. Answering Paragraph 7 of the Complaint, the Commission admits the allegations made in that paragraph.

8. Answering Paragraph 8 of the Complaint, the Commission admits that Plaintiffs allege the Court has subject-matter jurisdiction under 28 U.S.C. §§ 1331, 1367, 2201, 2202, and 2284 and 42 U.S.C. § 1983. The Commission denies that the Court has subject-matter jurisdiction, based on the Eleventh Amendment, over Plaintiffs' Second Claim for Relief and those elements of Plaintiffs' First Claim for Relief that implicate Arizona law. Even where the Court has subject-matter jurisdiction, the Commission denies that the Court should exercise its subject-matter jurisdiction where, as a matter of federalism and comity, the Court should certify state law constitutional issues to the Arizona Supreme Court, or should abstain and let the state courts of Arizona decide in a state action any relevant interpretations of Arizona constitutional law. The Commission also denies that the Court may exercise personal or subject-matter jurisdiction over the individual Commissioners in light of the doctrine of legislative immunity. The Commission denies the remaining allegations made in that paragraph.

9. Answering Paragraph 9 of the Complaint, the Commission admits the allegations made in that paragraph.

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10. Answering Paragraph 10 of the Complaint, the Commission admits the allegations made in that paragraph.

11. Answering Paragraph 11 of the Complaint, the Commission admits the allegations made in that paragraph.

12. Answering Paragraph 12 of the Complaint, the Commission admits the allegations made in that paragraph, but denies that they are relevant to any issue in this case.

13. Answering Paragraph 13 of the Complaint, the Commission admits the allegations made in that paragraph, but denies that they are relevant to any issue in this case.

14. Answering Paragraph 14 of the Complaint, the Commission admits the allegations made in that paragraph, but denies that they are relevant to any issue in this case.

15. Answering Paragraph 15 of the Complaint, the Commission admits the allegations made in that paragraph, but denies that they are relevant to any issue in this case.

16. Answering Paragraph 16 of the Complaint, the Commission admits the allegations made in that paragraph.

17. Answering Paragraph 17 of the Complaint, the Commission admits that Commissioner Mathis, a registered Independent from Pima County, submitted an application dated October 12, 2010 to the Appointment Commission and that a copy of the application is attached to the Complaint as Exhibit 1. The Commission asserts that the application speaks for itself. The Commission denies the remaining allegations made in that paragraph and denies that they are relevant to any issue in this case.

18. Answering Paragraph 18 of the Complaint, the Commission admits that the application did not include the listed statements, denies that the application required Commissioner Mathis to make any such statements, and admits that a copy of a campaign finance report is attached to the Complaint as Exhibit 2. The Commission asserts that the listed statements were irrelevant and that the campaign finance report speaks for itself. The Commission denies the remaining allegations made in that paragraph and denies that they are relevant to any issue in this case.

19. Answering Paragraph 19 of the Complaint, the Commission admits that Commissioner Mathis answered "No" to question number 6 of her application and asserts that such answer was truthful. The Commission denies the remaining allegations made in that paragraph and denies that they are relevant to any issue in this case.

20. Answering Paragraph 20 of the Complaint, the Commission admits the allegations made in that paragraph.

21. Answering Paragraph 21 of the Complaint, the Commission alleges that the record of the Commission interviews speaks for itself and, insofar as the paragraph contains verbatim citations to the record, admits the verbatim citations. The Commission denies the remaining allegations made in that paragraph and denies that they are relevant to any issue in this case,

22. Answering Paragraph 22 of the Complaint, the Commission denies the allegations made in that paragraph and denies that they are relevant to any issue in this case.

23. Answering Paragraph 23 of the Complaint, the Commission admits the allegations made in that paragraph.

24. Answering Paragraph 24 of the Complaint, the Commission admits the allegations made in that paragraph.

25. Answering Paragraph 25 of the Complaint, the Commission admits that Mr. Mathis attended certain public meetings of the Commission. The Commission denies the remaining allegations made in that paragraph and denies that they are relevant to any issue in this case.

26. Answering Paragraph 26 of the Complaint, the Commission denies the allegations made in that paragraph and denies that they are relevant to any issue in this case.

27. Answering Paragraph 27 of the Complaint, the Commission admits that it was fully constituted on March

1, 2011 and asserts that Article 4, Part 2, § 1(9) of the Arizona Constitution speaks for itself. The Commission denies the remaining allegations made in that paragraph.

28. Answering Paragraph 28 of the Complaint, the Commission admits that it selected Commissioners Herrera and Freeman to serve as co-vice-chairs. The Commission denies the remaining allegations made in that paragraph and denies that they are relevant to any issue in this case.

29. Answering Paragraph 29 of the Complaint, the Commission denies the allegations made in that paragraph and denies that they are relevant to any issue in this case.

30. Answering Paragraph 30 of the Complaint, the Commission denies the allegations made in that paragraph and denies that they are relevant to any issue in this case.

31. Answering Paragraph 31 of the Complaint, the Commission admits the allegations made in that paragraph, but denies that they are relevant to any issue in this case.

32. Answering Paragraph 32 of the Complaint, the Commission admits the allegations made in that paragraph, but denies that they are relevant to any issue in this case.

33. Answering Paragraph 33 of the Complaint, the Commission admits that it met in executive session at the times alleged in order to review proposals that were

confidential at the time and asserts that Article 4, Part 2, § 1(12) of the Arizona Constitution speaks for itself. The Commission denies the remaining allegations made in that paragraph and denies that they are relevant to any issue in this case.

34. Answering Paragraph 34 of the Complaint, the Commission admits the allegations made in that paragraph, but denies that they are relevant to any issue in this case.

35. Answering Paragraph 35 of the Complaint, the Commission admits that it selected Osborn Maledon, P.A. and Ballard Spahr LLP as its counsel following both public and executive sessions on May 12 and May 13, 2011. The Commission further admits that Mr. Kanefield was registered as a Republican at the time of his application and asserts that his application speaks for itself. The Commission lacks knowledge or information sufficient to form a belief as to the truth of the other allegations made in that paragraph regarding the duration of Mr. Kanefield's party registration as a Republican and Democrat and therefore denies them. The Commission denies the remaining allegations made in that paragraph and denies that they are relevant to any issue in this case.

36. Answering Paragraph 36 of the Complaint, the Commission admits that Commissioners McNulty, Herrera, and Mathis agreed to select the same Republican counsel. The Commission denies the remaining allegations made in that paragraph and denies that they are relevant to any issue in this case.

37. Answering Paragraph 37 of the Complaint, the Commission denies the allegations made in that paragraph and denies that they are relevant to any issue in this case.

38. Answering Paragraph 38 of the Complaint, the Commission denies the allegations made in that paragraph and denies that they are relevant to any issue in this case.

39. Answering Paragraph 39 of the Complaint, the Commission denies the allegations made in that paragraph and denies that they are relevant to any issue in this case.

40. Answering Paragraph 40 of the Complaint, the Commission admits that at the Commission's June 15, 2011 meeting, the four companies identified were selected to interview for the mapping consultant contract and that an executive session to discuss the proposals, which were confidential at that time, preceded that decision. The Commission denies the remaining allegations made in that paragraph and denies that they are relevant to any issue in this case.

41. Answering Paragraph 41 of the Complaint, the Commission admits that following presentations by candidates for mapping consultant on June 24, 2011, Commissioners Mathis, McNulty, and Herrera gave Strategic Telemetry perfect scores in certain categories and that Strategic Telemetry is headquartered in Washington, D.C. The Commission denies the remaining allegations made in that paragraph and denies that they are relevant to any issue in this case.

42. Answering Paragraph 42 of the Complaint, the Commission admits that a copy of the July 1, 2011 Yellow Sheet Report published by Arizona Capitol Reports, LLC is attached to the Complaint as Exhibit 3 and asserts that the document speaks for itself and is inadmissible hearsay. The Commission denies the remaining allegations made in that paragraph and denies that they are relevant to any issue in this case.

43. Answering Paragraph 43 of the Complaint, the Commission admits that Mr. Strasma is experienced in microtargeting, is considered to be a pioneer in the use of high-tech statistical modeling, served as the Targeting Director for President Obama's 2008 campaign, worked on Senator Kerry's 2004 presidential campaign, and contributed funds to certain Democratic candidates. The Commission lacks knowledge or information sufficient to form a belief as to the truth of the allegations regarding Mr. Strasma's involvement in Wisconsin recall elections and therefore denies them. The Commission denies the remaining allegations made in that paragraph and denies that they are relevant to any issue in this case.

44. Answering Paragraph 44 of the Complaint, the Commission denies the allegations made in that paragraph and denies that they are relevant to any issue in this case.

45. Answering Paragraph 45 of the Complaint, the Commission admits only that Commissioner Freeman has asserted that Commissioner Mathis discussed the selection of Strategic Telemetry as mapping consultant with him and that Exhibit 4 to the Complaint contains the

transcript of Commissioner Freeman's interview by the Attorney General's Office. The Commission asserts that the transcript speaks for itself and that communications among Commissioners regarding the selection of the mapping consultant are protected by the legislative privilege. The Commission denies the remaining allegations made in that paragraph and denies that they are relevant to any issue in this case.

46. Answering Paragraph 46 of the Complaint, the Commission admits that Commissioner Stertz has asserted that Commissioner Mathis discussed the selection of Strategic Telemetry as mapping consultant with him and that Exhibit 5 to the Complaint contains the transcript of Commissioner Stertz's interview by the Attorney General's Office. The Commission asserts that the transcript speaks for itself and that communications among Commissioners regarding the selection of the mapping consultant are protected by the legislative privilege. The Commission denies the remaining allegations made in that paragraph and denies that they are relevant to any issue in this case.

47. Answering Paragraph 47 of the Complaint, the Commission admits only that Commissioner Herrera communicated with other Commissioners regarding the selection of the mapping consultant during public sessions of properly-noticed Commission meetings and that the paragraph quotes a portion of the June 29, 2011 Commission meeting transcript. The Commission asserts that the transcript speaks for itself and that communications among Commissioners regarding the

selection of the mapping consultant are protected by the legislative privilege. The Commission denies the remaining allegations made in that paragraph and denies that they are relevant to any issue in this case.

48. Answering Paragraph 48 of the Complaint, the Commission admits only that Commissioner Mathis communicated with Commissioner McNulty, and other Commissioners, during public sessions of properly-noticed Commission meetings regarding the selection of the mapping consultant. The Commission asserts that communications among Commissioners regarding the selection of the mapping consultant are protected by the legislative privilege. The Commission denies the remaining allegations made in that paragraph and denies that they are relevant to any issue in this case.

49. Answering Paragraph 49 of the Complaint, the Commission admits that it met to consider the candidates for mapping consultant on June 29, 2011 and that, following an executive session, its counsel announced that the State Procurement Office had delegated the procurement of a mapping consultant to the Commission. The Commission denies the remaining allegations made in that paragraph and denies that they are relevant to any issue in this case.

50. Answering Paragraph 50 of the Complaint, the Commission denies that a "coalition" between Commissioners Mathis, McNulty, and Herrera existed. The Commission admits the remaining allegations made in that paragraph, but denies that they are relevant to any issue in this case.

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51. Answering Paragraph 51 of the Complaint, the Commission admits that Commissioner Mathis read from some prepared remarks regarding her vote for Strategic Telemetry. The Commission denies the remaining allegations made in that paragraph and denies that they are relevant to any issue in this case.

52. Answering Paragraph 52 of the Complaint, the Commission asserts that the Arizona Attorney General Agency Handbook speaks for itself. The Commission denies the remaining allegations made in that paragraph and denies that they are relevant to any issue in this case.

53. Answering Paragraph 53 of the Complaint, the Commission denies that the Commission's decision to hire Strategic Telemetry irreparably damaged public confidence in the IRC, but admits that people who objected to the decision criticized the Commission and Chairperson Mathis at subsequent meetings. The Commission denies the remaining allegations made in that paragraph and denies that they are relevant to any issue in this case.

54. Answering Paragraph 54 of the Complaint, the Commission denies the allegations made in that paragraph and denies that they are relevant to any issue in this case.

55. Answering Paragraph 55 of the Complaint, the Commission admits the allegations made in that paragraph, but denies that they are relevant to any issue in this case.

56. Answering Paragraph 56 of the Complaint, the Commission admits the allegations made in that paragraph, but denies that they are relevant to any issue in this case.

57. Answering Paragraph 57 of the Complaint, the Commission admits that Commissioners Freeman and Stertz agreed to be interviewed under oath. The Commission denies the remaining allegations made in that paragraph and denies that they are relevant to any issue in this case.

58. Answering Paragraph 58 of the Complaint, the Commission admits that Commissioners Mathis, McNulty, and Herrera received separate counsel at the Commission's expense and did not agree to be interviewed under oath as part of the Attorney General's improper investigation and that the Attorney General filed suit in state court. The Commission denies the remaining allegations made in that paragraph and denies that they are relevant to any issue in this case.

59. Answering Paragraph 59 of the Complaint, the Commission admits that it has taken the position that it is subject to the Arizona Constitution's public-meeting requirement that applies only to the Commission, rather than the statutory open-meeting law; that its counsel had provided some training on open-meeting-law compliance; and that it had discussed the open-meeting law in connection with conducting its public and executive sessions. The Commission asserts that because the allegations made in that paragraph regarding

the Commission's rights and obligations call for legal conclusions, a response is not required and the Commission denies them. The Commission further asserts that most of the time in executive session related to reviewing confidential procurement documents in cooperation with the State Procurement Office. The Commission denies the remaining allegations made in that paragraph and denies that they are relevant to any issue in this case.

60. Answering Paragraph 60 of the Complaint, the Commission admits the allegations made in that paragraph, but denies that they are relevant to any issue in this case.

61. Answering Paragraph 61 of the Complaint, the Commission admits the allegations made in that paragraph, but denies that they are relevant to any issue in this case.

62. Answering Paragraph 62 of the Complaint, the Commission denies the allegations made in that paragraph and denies that they are relevant to any issue in this case.

63. Answering Paragraph 63 of the Complaint, the Commission denies the allegations made in that paragraph.

64. Answering Paragraph 64 of the Complaint, the Commission asserts that the cited sections of the Arizona Constitution and case law speak for themselves.

65. Answering Paragraph 65 of the Complaint, the Commission asserts that the cited case law speaks for itself.

66. Answering Paragraph 66 of the Complaint, the Commission asserts that the cited case law speaks for itself.

67. Answering Paragraph 67 of the Complaint, the Commission asserts that the cited case law speaks for itself.

68. Answering Paragraph 68 of the Complaint, the Commission asserts that the cited case law speaks for itself.

69. Answering Paragraph 69 of the Complaint, the Commission admits the allegations made in that paragraph.

70. Answering Paragraph 70 of the Complaint, the Commission admits the allegations made in that paragraph.

71. Answering Paragraph 71 of the Complaint, the Commission admits that it considered two possible congressional grid maps and that it chose Grid Map No. 2, a copy of which is attached to the Complaint. The Commission asserts that the cited sections of the Arizona Constitution speak for themselves. The Commission denies the remaining allegations made in that paragraph and denies that they are relevant to any issue in this case.

72. Answering Paragraph 72 of the Complaint, the Commission asserts that the cited portions of the transcript speak for themselves. The Commission denies the remaining allegations made in that paragraph and denies that they are relevant to any issue in this case.

73. Answering Paragraph 73 of the Complaint, the Commission denies the allegations made in that paragraph and denies that they are relevant to any issue in this case.

74. Answering Paragraph 74 of the Complaint, the Commission admits the allegations made in that paragraph.

75. Answering Paragraph 75 of the Complaint, the Commission admits the allegations made in that paragraph.

76. Answering Paragraph 76 of the Complaint, the Commission admits only that Commissioners McNulty, Herrera, Stertz, and Freeman each proposed certain mapping iterations. The Commission denies the remaining allegations made in that paragraph.

77. Answering Paragraph 77 of the Complaint, the Commission admits only that Commissioners McNulty, Herrera, Stertz, and Freeman each proposed certain mapping iterations. The Commission denies the remaining allegations made in that paragraph and denies that they are relevant to any issue in this case.

78. Answering Paragraph 78 of the Complaint, the Commission denies the allegations made in that paragraph.

79. Answering Paragraph 79 of the Complaint, the Commission admits that Commissioner Mathis worked on a congressional map to reach a compromise between alternative proposed versions outside of Maricopa County; that she presented the map at a September 26, 2011 meeting; and that some referred to the map as the "donut-hole map." The Commission denies the remaining allegations made in that paragraph and denies that they are relevant to any issue in this case.

80. Answering Paragraph 80 of the Complaint, the Commission denies the allegations made in that paragraph and denies that they are relevant to any issue in this case.

81. Answering Paragraph 81 of the Complaint, the Commission denies the allegations made in that paragraph and denies that they are relevant to any issue in this case.

82. Answering Paragraph 82 of the Complaint, the Commission denies the allegations made in that paragraph and denies that they are relevant to any issue in this case.

83. Answering Paragraph 83 of the Complaint, the Commission admits the allegations made in that paragraph, but denies that they are relevant to any issue in this case.

84. Answering Paragraph 84 of the Complaint, the Commission admits that following its approval of the congressional map, it worked on the legislative map. The Commission denies the remaining allegations made in that paragraph.

85. Answering Paragraph 85 of the Complaint, the Commission admits the allegations made in that paragraph.

86. Answering Paragraph 86 of the Complaint, the Commission asserts that because the allegations made in that paragraph call for legal conclusions, a response is not required and the Commission denies them.

87. Answering Paragraph 87 of the Complaint, the Commission admits the allegations made in that paragraph.

88. Answering Paragraph 88 of the Complaint, the Commission denies the allegations made in that paragraph.

89. Answering Paragraph 89 of the Complaint, the Commission denies the allegations made in that paragraph.

90. Answering Paragraph 90 of the Complaint, the Commission denies the allegations made in that paragraph.

91. Answering Paragraph 91 of the Complaint, the Commission admits the allegations made in that paragraph.

92. Answering Paragraph 92 of the Complaint, the Commission admits that the Arizona Legislature approved House Concurrent Memorial 2001 on November 1, 2011 and asserts that the Memorial speaks for itself. The Commission denies the remaining allegations made in that paragraph.

93. Answering Paragraph 93 of the Complaint, the Commission admits that the Governor sent a letter to the Commissioners on October 26, 2011 and requested a response by October 31, 2011 and asserts that the letter speaks for itself. The Commission denies the remaining allegations made in that paragraph and denies that they are relevant to any issue in this case.

94. Answering Paragraph 94 of the Complaint, the Commission admits the allegations made in that paragraph, but denies that the Governor's actions were based on the Chairperson's response and denies that the allegations are relevant to any issue in this case.

95. Answering Paragraph 95 of the Complaint, the Commission admits the allegations made in that paragraph, but denies that they are relevant to any issue in this case.

96. Answering Paragraph 96 of the Complaint, the Commission admits the allegations made in that

paragraph, but denies that they are relevant to any issue in this case.

97. Answering Paragraph 97 of the Complaint, the Commission denies the allegations made in that paragraph.

98. Answering Paragraph 98 of the Complaint, the Commission denies the allegations made in that paragraph and denies that they are relevant to any issue in this case.

99. Answering Paragraph 99 of the Complaint, the Commission admits only that the November 29, 2011 Commission meeting agenda included the Legislative recommendations and that Paragraph 99 cites a portion of the November 29, 2011 Commission meeting transcript. The Commission asserts that the transcript of the meeting speaks for itself. The Commission denies the remaining allegations made in that paragraph and denies that they are relevant to any issue in this case.

100. Answering Paragraph 100 of the Complaint, the Commission admits only that Paragraph 100 cites a portion of the November 29, 2011 Commission meeting transcript. The Commission asserts that the transcript of the meeting speaks for itself. The Commission denies the remaining allegations made in that paragraph and denies that they are relevant to any issue in this case.

101. Answering Paragraph 101 of the Complaint, the Commission denies the allegations made in that paragraph and denies that they are relevant to any issue in this case.

102. Answering Paragraph 102 of the Complaint, the Commission denies the allegations made in that paragraph and denies that they are relevant to any issue in this case.

103. Answering Paragraph 103 of the Complaint, the Commission denies the allegations made in that paragraph and denies that they are relevant to any issue in this case.

104. Answering Paragraph 104 of the Complaint, the Commission admits that between November 29, 2011 and January 17, 2012, it made numerous changes in the draft legislative map, some of which are described in the chart. The Commission admits the changes to legislative districts 1, 4, 5, 6, 7, 8, 11, 12, 13, 14, 21, 23, and 27 were made, but denies that Paragraph 104 fully and completely describes the Commission's changes to those districts and denies allegations that include vague, imprecise geographic descriptions. With regard to the allegation regarding legislative district 2, the Commission admits that a portion of Cochise County was moved from legislative district 2 to legislative district 14 and that Green Valley was added to legislative district 2, but denies that more of Tucson was added to the district and denies that Paragraph 104 fully and completely describes the changes to district 2. With regard to the allegations concerning district 15, the Commission admits that the district includes area west of I-17, but denies that all areas south of Union Hills were removed from the district in the final map and denies that Paragraph 104 fully and completely describes changes to district 15. With regard to the allegation concerning district 20, the Commission admits that the final map includes parts of Glendale that the draft map did not

include, but denies that the area is accurately described as eastern Glendale and denies that Paragraph 104 fully and completely describes the changes to district 20. With regard to the allegations concerning District 24, the Commission admits the allegation concerning the Salt River Pima- Maricopa Indian Community, but denies the allegation concerning northeastern Scottsdale and denies that Paragraph 104 fully and completely describes the changes to district 24. With regard to District 26, the Commission admits the allegation concerning the Salt River Pima-Maricopa Indian Community, but denies the allegation concerning northeastern Scottsdale and denies that Paragraph 104 fully and completely describes the changes to district 26. The Commission denies the remaining allegations made in that paragraph.

105. Answering Paragraph 105 of the Complaint, the Commission admits that it approved the final legislative map on January 17, 2012. The Commission denies the remaining allegations made in that paragraph.

106. Answering Paragraph 106 of the Complaint, the Commission denies the allegations made in that paragraph.

107. Answering Paragraph 107 of the Complaint, the Commission admits the allegations made in that paragraph, but denies that they are relevant to any issue in this case.

108. Answering Paragraph 108 of the Complaint, the Commission admits the allegations made in that paragraph.

109. Answering Paragraph 109 of the Complaint, the Commission denies the allegations made in that paragraph.

110. Answering Paragraph 110 of the Complaint, the Commission admits that the populations of Districts 1, 5, 6, 11, 12, 14, 15, 16, 17, 18, 20, 21, 22, 23, 25, and 28 exceed 213,067 residents; that District 13's population is 1,366 residents below 213,067; and that Exhibit 14, which includes some but not all of the data that the Commission generated to evaluate the competitiveness of the districts, includes the Commission's legislative-district party-registration breakdown. The Commission denies the remaining allegations made in that paragraph.

111. Answering Paragraph 111 of the Complaint, the Commission denies Plaintiffs' calculation regarding District 18. The Commission admits the remaining allegations made in that paragraph, but asserts that the seventeen Republican-plurality districts – including District 13, which has a population lower than the ideal population – exceed the ideal population by an average of 4,138 people, or 1.9 percent.

112. Answering Paragraph 112 of the Complaint, the Commission admits that, based on Exhibit 14, the fourteen districts with highest population have a Republican plurality, four other districts exceed the ideal district population by less than .3 percent, District 9 has a Democratic plurality, and Districts 11 and 23 have a Republican plurality. The Commission asserts that, according to Exhibit 14, District 26 has a plurality of

voters registered as other than Democrat or Republican. The Commission asserts that of the twelve districts with populations lower than the ideal district population, ten have a Democratic plurality, one has a Republican plurality, and one has a plurality of voters registered as other than Democrat or Republican. The Commission denies the remaining allegations made in that paragraph.

113. Answering Paragraph 113 of the Complaint, the Commission admits that Districts 2, 3, 4, 7, 8, 10, 24, 27, 29, and 30 have a Democratic plurality and are below the ideal district population, that District 9 has a Democratic plurality and is slightly above the ideal district population (by approximately .07 percent), and that District 26 is slightly above the ideal population (by approximately .28 percent). The Commission asserts that District 13, which is below the ideal population, has a Republican plurality; that District 19, which is below the ideal population, has a plurality of voters registered as other than Democrat or Republican; and that District 26, which is above the ideal population, has a plurality of voters registered as other than Democrat or Republican. The Commission denies the remaining allegations made in that paragraph.

114. Answering Paragraph 114 of the Complaint, the Commission admits that approximately 89 percent of the districts that exceed the ideal district population have a Republican plurality based on Exhibit 14 and asserts that approximately 83 percent of the districts that are lower than the ideal district population have a Democratic plurality based on Exhibit 14. The Commission denies the remaining allegations made in that paragraph.

115. Answering Paragraph 115 of the Complaint, the Commission denies that District 19 has a Democratic plurality based on Exhibit 14, that there are eleven Democratic-plurality districts with less than the ideal population, and that the Democratic-plurality districts that are below the ideal population fall short of the ideal population by 6,461 people (3.03 percent). The Commission asserts that, based on Exhibit 14, District 19 has a plurality of voters registered as other than Democrat or Republican. The Commission admits the remaining allegations made in that paragraph.

116. Answering Paragraph 116 of the Complaint, the Commission denies that District 19 is a Democratic district based on voter registration in Exhibit 14 and asserts that, based on Exhibit 14, it has a plurality of voters registered as other than Democrat or Republican. The Commission asserts that the various competitiveness indices that consider past election results indicate that voters in District 19 tend to support Democratic candidates. The Commission admits the remaining allegations made in that paragraph.

117. Answering Paragraph 117 of the Complaint, the Commission admits that nine of the 30 districts have populations within one percent of the ideal population. The Commission denies the remaining allegations made in that paragraph.

118. Answering Paragraph 118 of the Complaint, the Commission denies that Exhibit 17 to the Complaint contains the chart described and asserts that the

chart attached as part of Exhibit 18 is inaccurate. The Commission denies the remaining allegations made in that paragraph.

119. Answering Paragraph 119 of the Complaint, the Commission admits that it possessed the technical ability to achieve exact equality, which it asserts is not required for legislative districts. The Commission denies the remaining allegations made in that paragraph.

120. Answering Paragraph 120 of the Complaint, the Commission admits that demographers can create districts of equal population. The Commission lacks knowledge or information sufficient to form a belief as to the truth of the other allegations made in that paragraph regarding demographers' capabilities and therefore denies them. The Commission denies the remaining allegations made in that paragraph.

121. Answering Paragraph 121 of the Complaint, the Commission admits that it created congressional districts of equal population and took into account the Voting Rights Act's requirements when creating those districts, but denies that Paragraph 121 accurately describes the Voting Rights Act's requirements.

122. Answering Paragraph 122 of the Complaint, the Commission admits the allegations made in that paragraph, except that the figures included in the paragraph result in a total deviation of 8.78%.

123. Answering Paragraph 123 of the Complaint, the Commission admits the allegations made regarding the population deviations in Arizona's legislative districts. The Commission lacks knowledge or information sufficient to form a belief as to the truth of the allegations made in that paragraph regarding other states and therefore denies them. The Commission denies the remaining allegations made in that paragraph.

124. Answering Paragraph 124 of the Complaint, the Commission denies the allegations made in that paragraph.

125. Answering Paragraph 125 of the Complaint, the Commission admits that the figures provided are approximately correct, but denies that the ACS figures were released in 2010. The Commission asserts that the ACS data is not available at the block level and that the citizen voting-age population figures are necessarily approximate.

126. Answering Paragraph 126 of the Complaint, the Commission admits that a copy of the voting-age population breakdown is attached as Exhibit 15 of the Complaint and asserts that it speaks for itself. The Commission denies the remaining allegations made in that paragraph.

127. Answering Paragraph 127 of the Complaint, the Commission admits that the Hispanic voting-age population and Hispanic citizen voting-age population figures for the seven listed districts are approximately

correct. The Commission asserts that the ACS data is not available at the block level and that the citizen voting-age population figures are necessarily approximate. The Commission denies the remaining allegations made in that paragraph.

128. Answering Paragraph 128 of the Complaint, the Commission denies that only seven districts provided Hispanic voters with the ability to elect candidates of their choice and that the Commission used the label "minority opportunity districts." The Commission admits the remaining allegations made in that paragraph and asserts that minority voters also have the ability to elect their candidates of choice in districts 24 and 26.

129. Answering Paragraph 129 of the Complaint, the Commission denies the allegations made in that paragraph and asserts that the deviations in the map accommodate the goals identified in the Arizona Constitution.

130. Answering Paragraph 130 of the Complaint, the Commission admits that some whole or split precincts exist on the boundaries of some of the districts in which Hispanic voters have the ability to elect their candidates of choice. The Commission lacks knowledge or information sufficient to form a belief as to the truth of the allegations made in that paragraph regarding other map-drawing alternatives and therefore denies them. The Commission denies the remaining allegations made in that paragraph and asserts that the districts were drawn to accommodate the goals identified in the Arizona Constitution.

131. Answering Paragraph 131 of the Complaint, the Commission asserts that District 7 has a Native-American voting-age population of 63.7 percent. The Commission lacks knowledge or information sufficient to form a belief as to the truth of the allegations made in that paragraph regarding other map-drawing alternatives and therefore denies them. The Commission denies the remaining allegations made in that paragraph and asserts that District 7 was drawn to accommodate the goals identified in the Arizona Constitution.

132. Answering Paragraph 132 of the Complaint, the Commission admits that the figures provided are approximately correct, but denies that the allegations provide a full and complete analysis of which benchmark districts provided minority voters the ability to elect the candidate of their choice. The Commission asserts that the ACS data is not available at the block level and that the citizen voting-age population figures are necessarily approximate. The Commission denies the remaining allegations made in that paragraph.

133. Answering Paragraph 133 of the Complaint, the Commission lacks knowledge or information sufficient to form a belief as to the truth of the allegations made in that paragraph regarding other map-drawing alternatives and therefore denies them. The Commission denies the remaining allegations made in that paragraph.

134. Answering Paragraph 134 of the Complaint, the Commission lacks knowledge or information sufficient to form a belief as to the truth of the allegations made in

that paragraph regarding other map-drawing alternatives and therefore denies them. The Commission denies the remaining allegations made in that paragraph.

135. Answering Paragraph 135 of the Complaint, the Commission denies the allegations made in that paragraph.

136. Answering Paragraph 136 of the Complaint, the Commission denies the allegations made in that paragraph.

137. Answering Paragraph 137 of the Complaint, the Commission denies the allegations made in that paragraph and asserts that changes in the districts accommodated the goals identified in the Arizona Constitution.

138. Answering Paragraph 138 of the Complaint, the Commission denies the allegations made in that paragraph.

139. Answering Paragraph 139 of the Complaint, the Commission admits that the Department of Justice refused to object to the legislative map in an April 26, 2012 letter, which the Commission asserts speaks for itself. The Commission denies the remaining allegations made in that paragraph.

140. Answering Paragraph 140 of the Complaint, the Commission denies the allegations made in that paragraph.

141. Answering Paragraph 141 of the Complaint, the Commission denies the allegations made in that paragraph.

142. Answering Paragraph 142 of the Complaint, the Commission admits the allegations identifying the individual candidates who filed for nominations. The Commission denies the remaining allegations made in that paragraph.

143. Answering Paragraph 143 of the Complaint, the Commission denies the allegations made in that paragraph.

144. Answering Paragraph 144 of the Complaint, the Commission denies the allegations made in that paragraph.

145. Answering Paragraph 145 of the Complaint, the Commission denies the allegations made in that paragraph.

146. Answering Paragraph 146 of the Complaint, the Commission denies the allegations made in that paragraph.

147. Answering Paragraph 147 of the Complaint, the Commission denies the allegations made in that paragraph.

148. Answering Paragraph 148 of the Complaint, the Commission lacks knowledge or information sufficient to

form a belief as to the truth of the allegations made in that paragraph and therefore denies them.

149. Answering Paragraph 149 of the Complaint, the Commission denies the allegations made in that paragraph.

150. Answering Paragraph 150 of the Complaint, the Commission denies the allegations made in that paragraph.

151. Answering Paragraph 151 of the Complaint, the Commission denies the allegations made in that paragraph.

152. Answering Paragraph 152 of the Complaint, the Commission admits that the allegations accurately describe the information in Exhibit 19. The Commission denies the remaining allegations made in that paragraph.

153. Answering Paragraph 153 of the Complaint, the Commission denies that the final legislative map split reservations more than three times. The Commission admits the remaining allegations made in that paragraph.

154. Answering Paragraph 154 of the Complaint, the Commission denies that the final legislative map split the City of Tempe three times, asserts that the map split the City of Tempe four times, and admits the remaining allegations made in that paragraph.

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155. Answering Paragraph 155 of the Complaint, the Commission denies the allegations made in that paragraph.

156. Answering Paragraph 156 of the Complaint, the Commission denies the allegations made in that paragraph.

157. Answering Paragraph 157 of the Complaint, the Commission denies the allegations made in that paragraph.

158. Answering Paragraph 158 of the Complaint, the Commission incorporates by reference its responses to Paragraphs 1 through 157.

159. Answering Paragraph 159 of the Complaint, the Commission asserts that because the allegations made in that paragraph call for legal conclusions, a response is not required and the Commission denies them.

160. Answering Paragraph 160 of the Complaint, the Commission denies the allegations made in that paragraph.

161. Answering Paragraph 161 of the Complaint, the Commission denies the allegations made in that paragraph.

162. Answering Paragraph 162 of the Complaint, the Commission denies the allegations made in that paragraph.

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163. Answering Paragraph 163 of the Complaint, the Commission denies the allegations made in that paragraph.

164. Answering Paragraph 164 of the Complaint, the Commission incorporates by reference its responses to Paragraphs 1 through 163.

165. Answering Paragraph 165 of the Complaint, the Commission denies the allegations made in that paragraph.

166. Answering Paragraph 166 of the Complaint, the Commission asserts that because the allegations made in that paragraph call for legal conclusions, a response is not required and the Commission denies them.

167. Answering Paragraph 167 of the Complaint, the Commission denies the allegations made in that paragraph.

168. Answering Paragraph 168 of the Complaint, the Commission denies the allegations made in that paragraph.

169. Answering Paragraph 169 of the Complaint, the Commission denies the allegations made in that paragraph.

170. Answering Paragraph 170 of the Complaint, the Commission denies the allegations made in that paragraph.

171. Answering Paragraph 171 of the Complaint, the Commission denies the allegations made in that paragraph.

172. For its affirmative defenses, the Commission alleges as follows:

a. The Court lacks subject-matter jurisdiction, based on the Eleventh Amendment, over Plaintiffs' Second Claim for Relief and those elements of Plaintiffs' First Claim for Relief that implicate Arizona law.

b. Commissioners Freeman, Herrera, Mathis, McNulty, and Stertz are protected by legislative immunity and therefore are not subject to suit by Plaintiffs for their work in connection with Arizona's legislative map.

c. The Court must abstain from determining any issues implicating Arizona constitutional law until the State resolves such issues, as required by *Railroad Commission v. Pullman Company*, 312 U.S. 496 (1941) and related abstention principles.

d. The Court's resolution of any claims based on federal Constitutional law does not depend upon, or implicate, any issues of Arizona Constitutional law. If, however, the Court finds otherwise, Defendants assert as an affirmative defense the Court's need for abstention, or certification of state questions on state constitutional law to the state court.

e. Plaintiffs lack standing to assert any claims that do not relate to alleged population deviations in the specific districts in which they reside.

f. Plaintiffs' claims present non-justiciable political questions. For example, the Supreme Court has not held that partisanship is an illegitimate state basis under the federal Constitution to justify population deviations of up to 10% in legislative redistricting. "Competitiveness," which necessarily requires looking at the balance of partisan interests in a district, is a legitimate state basis under the federal Constitution to justify population deviations of up to 10% in legislative redistricting.

g. Plaintiffs' claims are barred, in whole or in part, by their failure to state a claim upon which relief may be granted.

h. The Commission reserves the right to add any additional affirmative defenses that may be warranted by subsequent investigation and/or discovery in this case.

WHEREFORE, having fully answered Plaintiffs' Second Amended Complaint, the Commission requests that judgment be entered in its favor as follows:

1. That the Complaint be dismissed or denied, with Plaintiffs being entitled to no injunctive, declaratory, or other relief; and

2. For such further relief to which the Commission may be entitled or that the Court deems just and proper.

Appendix G

RESPECTFULLY SUBMITTED this 3rd day of December, 2012.

BALLARD SPAHR LLP

By: /s/ Joseph A. Kanefield
Joseph A. Kanefield (015838)
Brunn W. Roysden III (028698)

OSBORN MALEDON, P.A.

By: /s/ Jeffrey B. Molinar
Colin F. Campbell (004955)
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Attorneys for the Arizona Independent Redistricting Commission and Commissioners Mathis, McNulty, Herrera, Freeman, and Stertz solely in their official capacities

APPENDIX H — ANSWER TO SECOND AMENDED COMPLAINT IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF ARIZONA, FILED DECEMBER 3, 2012 BY DEFENDANT KEN BENNETT

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF ARIZONA

Case No: CV12-0894-PHX-ROS

WESLEY W. HARRIS, *et al.*,

Plaintiffs,

vs.

ARIZONA INDEPENDENT REDISTRICTING COMMISSION, *et al.*,

Defendants.

SECRETARY OF STATE KEN BENNETT'S ANSWER TO SECOND AMENDED COMPLAINT

Defendant Ken Bennett, for his answer, admits and denies the allegations in Plaintiffs' Second Amended Complaint as follows. Any allegation not specifically admitted is denied.

1. With respect to paragraphs 1 and 2, Defendant Ken Bennett, the Arizona Secretary of State, takes no

position on the constitutionality of the Final Legislative Map created and adopted by the Arizona Independent Redistricting Commission ("IRC"). Secretary Bennett further takes no position on the allegations that the IRC violated section 2 of the Voting Rights Act. The statements set forth in these introductory paragraphs are argumentative rather than factual allegations. To that extent that any factual allegations are contained therein, they are not addressed to Secretary Bennett and therefore he neither admits nor denies them.

Secretary Bennett has been named to this lawsuit as a nominal party because of his responsibilities and duties associated with overseeing the statewide elections, including the upcoming 2012 congressional primary and general elections, which are scheduled to occur on August 28, 2012 and November 6, 2012 respectively. Secretary Bennett should be considered a nominal party for the purpose of attorneys' fees analysis and exempted from liability for attorneys' fees under A.R.S. § 12-348(H)(4). *See Bromley v. Arizona Dep't of Revenue*, 170 Ariz. 532, 539, 826 P.2d 1158, 1165 (App. 1991) (noting that nominal parties "lack any pecuniary or proprietary stake in the outcome of the action).

2. With respect to paragraph 3, Secretary Bennett admits the allegations contained therein, except as follows, based on a review of the information available to the Secretary of State in the voter registration records: Karen MacKean is registered under the name Karen MacKean-Foust.

3. With respect to paragraph 4, the allegations contained therein are not addressed to Secretary Bennett or his official responsibilities as the Arizona Secretary of State. Further, Secretary Bennett lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained therein. As such, he does not admit or deny those allegations.

4. With respect to paragraph 5, Secretary Bennett admits only that the provisions of the Arizona Constitution speak for themselves.

5. With respect to paragraphs 6 through 10, Secretary Bennett admits the allegations contained therein.

6. With respect to paragraphs 11 through 16, Secretary Bennett admits the allegations contained therein.

7. With respect to paragraphs 17 and 18, Secretary Bennett admits only that the campaign finance report attached as Exhibit 2 to the Complaint appears to be a true copy of the report maintained in the Secretary's Office.

8. With respect to paragraph 19, the allegations contained therein are not addressed to Secretary Bennett or his official responsibilities as the Arizona Secretary of State.

9. With respect to paragraph 20, Secretary Bennett admits the allegations contained therein.

10. With respect to paragraphs 21 through 63, the allegations contained therein are not addressed to Secretary Bennett or his official responsibilities as the Arizona Secretary of State. Further, Secretary Bennett lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained therein. As such, he does not admit or deny those allegations. Insofar as these paragraphs quote constitutional and statutory provisions, Secretary Bennett admits only that those authorities speak for themselves.

11. With respect to paragraphs 64 through 68, Secretary Bennett admits only that the provisions of the Arizona Constitution and the Arizona Supreme Court's opinion in *Arizona Minority Coalition for Fair Redistricting v. Ariz. Indep. Redistricting Comm'n*, 220 Ariz. 587, 208 P.3d 676 (2009) speak for themselves.

12. With respect to paragraphs 69 through 92, the allegations contained therein are not addressed to Secretary Bennett or his official responsibilities as the Arizona Secretary of State. Further, Secretary Bennett lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained therein. As such, he does not admit or deny those allegations.

13. With respect to paragraph 93, the allegations contained therein are not addressed to Secretary Bennett or his official responsibilities as the Arizona Secretary of State. The allegations contained therein regarding the attempt to remove Commissioner Mathis from office are a matter of public record and set forth in

the Arizona Supreme Court's Opinion in *Arizona Indep. Redistricting Comm'n v. Brewer*, 229 Ariz. 347, 275 P.3d 1267 (2012). Secretary Bennett lacks sufficient knowledge or information to form a belief as to the truth of the allegations regarding the Governor's or Legislature's motivations regarding this matter. As such, he does not admit or deny those allegations.

14. With respect to paragraph 94, to the extent it is directed at the Governor's determination of the adequacy of Chairman Mathis' response, Secretary Bennett does not admit or deny the allegation. With regard to the other allegations, Secretary Bennett admits the allegations to the extent that, pursuant to Ariz. Const. Art. 5, § 6, in the absence of the Governor from the state, the elected Secretary acts as the Governor. On November 1, 2011, at the request of Governor Brewer, Secretary Bennett, while serving as Acting Governor, issued the letter of intent to remove Chairperson Mathis from the AIRC and called a special session of the Legislature for the purpose of obtaining concurrence from the Arizona Senate.

15. With respect to paragraphs 95 and 96, the allegations contained therein are not addressed to Secretary Bennett or his official responsibilities as the Arizona Secretary of State. The allegations contained therein regarding the attempt to remove Commissioner Mathis from office are a matter of public record and set forth in the Arizona Supreme Court's Opinion in *Arizona Indep. Redistricting Comm'n v. Brewer*, 229 Ariz. 347, 275 P.3d 1267 (2012). Secretary Bennett lacks sufficient knowledge or information to form a belief as to the truth of the allegations regarding the Governor's or Legislature's

motivations regarding this matter. As such, he does not admit or deny those allegations.

16. With respect to paragraphs 97 through 138, the allegations contained therein are not addressed to Secretary Bennett or his official responsibilities as the Arizona Secretary of State. Further, Secretary Bennett lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained therein. As such, he does not admit or deny those allegations.

17. With respect to paragraph 139, admits only that the Department of Justice precleared the Final Legislative Map by letter dated April 26, 2012. The remaining allegations contained therein are not addressed to Secretary Bennett or his official responsibilities as the Arizona Secretary of State. Further, Secretary Bennett lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained therein. As such, he does not admit or deny those allegations.

18. With respect to paragraphs 140 through 171, the allegations contained therein are not addressed to Secretary Bennett or his official responsibilities as the Arizona Secretary of State. Further, Secretary Bennett lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained therein. As such, he does not admit or deny those allegations. However, Secretary Bennett further affirmatively states that he takes no position on the validity of lines contained within the Final Legislative Map or the process by which IRC created and adopted Final Legislative Map, nor on the merits of the claims made by the Plaintiffs.

WHEREFORE, Defendant Secretary Bennett prays for the following relief:

1. Prompt resolution of the issues concerning the validity and constitutionality of the Final Legislative Map such that the 2014 and subsequent elections shall proceed.

2. That Plaintiff and the IRC Defendants take *nothing* in the form of attorneys' fees or taxable costs from Defendant Secretary Bennett.

Respectfully submitted this 3rd day of December, 2012.

Thomas C. Horne
Attorney General

s/ Michele L. Forney
Michele L. Forney
Assistant Attorney General
Attorneys for Defendant Ken Bennett

APPENDIX I — JUDGMENT OF THE UNITED STATES DISTRICT COURT, DISTRICT OF ARIZONA, FILED APRIL 29, 2014

UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

CV-12-00894-PHX-ROS-NVW-RRC

WESLEY W. HARRIS, *et al.*,

Plaintiffs,

v.

ARIZONA INDEPENDENT REDISTRICTING COMMISSION, *et al.*,

Defendant(s).

JUDGMENT IN A CIVIL CASE

____ Jury Verdict. This action came before the Court for a trial by jury. The issues have been tried and the jury has rendered its verdict.

__X__ Decision by Court. This action came for consideration before the Court. The issues have been considered and a decision has been rendered.

IT IS ORDERED AND ADJUDGED that pursuant to the Court's Order filed April 29, 2014, judgment is entered in favor of defendant and against plaintiff. Plaintiff to take nothing, and complaint and action are terminated.

Appendix I

BRIAN D. KARTH
District Court Executive/Clerk

April 29, 2014

s/A. Smith
By: A. Smith, Deputy Clerk

APPENDIX J — TRANSCRIPT OF THE PROCEEDINGS OF THE ARIZONA INDEPENDENT REDISTRICTING COMMISSION, DATED DECEMBER 8, 2011

ARIZONA INDEPENDENT REDISTRICTING COMMISSION

Wednesday November 30, 2011
4:16 p.m.

Location

Fiesta Resort - Fiesta Ballroom
2100 South Priest Drive
Tempe, Arizona 85282

Attending

Colleen C. Mathis, Chair
Jose M. Herrera, Vice Chair
Linda C. McNulty, Commissioner
Richard P. Stertz, Commissioner

Ray Bladine, Executive Director
Buck Forst, Information Technology Specialist
Kristina Gomez, Deputy Executive Director
Stu Robinson, Public Information Officer

Mary O'Grady, Legal Counsel
Joe Kanefield, Legal Counsel
Bruce Adelson, Legal Counsel

Appendix J

Reported By:
Marty Herder, CCR
Certified Court Reporter #50162
www.CourtReportersAz.com

[2] **PROCEEDINGS**

(Whereupon, the public session commences.)

CHAIRPERSON MATHIS: Good afternoon. This meeting of the Arizona Independent Redistricting Commission will now come to order.

Today is Wednesday, November 30th, and the time is 4:16 p.m.

Please rise for the Pledge of Allegiance.

(Whereupon, the Pledge of Allegiance was recited.)

CHAIRPERSON MATHIS: Okay. We'll start with roll call.

Vice-Chair Freeman.

(No oral response.)

CHAIRPERSON MATHIS: Vice-Chair Herrera.

VICE-CHAIR HERRERA: Here.

CHAIRPERSON MATHIS: Commissioner McNulty.

COMMISSIONER McNULTY: Here.

CHAIRPERSON MATHIS: Commissioner Stertz.

COMMISSIONER STERTZ: Here.

CHAIRPERSON MATHIS: We have a quorum.

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[38] COMMISSIONER STERTZ: Mr. Strasma, I appreciate the macroview of what happens district by district, but what I was more inclined to get some reference to is that when you take blocks out of -- as you're making adjustments to improve the ability to elect in a particular district and you're extracting a block and moving it to another district, not how that affects the overall district, but that block that you're extracting, as you may have described may have been an Anglo block, a Republican voting block, and looking at where that block is being moved to, what I'm, what I'm concerned about is that we're going -- we may be taking voters and moving them into a place where they have a -- they -- maybe packing into a larger Republican district where there is already a majority of Republicans might be a preference for that group to be input. It might be -- I'm trying to make sure that we're not disenfranchising any potential voters or any potential voter blocks as we're moving from one district to another.

VICE-CHAIR HERRERA: Madam Chair.

Appendix J

CHAIRPERSON MATHIS: Mr. Herrera.

VICE-CHAIR HERRERA: I think we all agree that the -- fulfilling the Voting Rights Act requirements trumps pretty much anything.

You know, let's be honest, that there is, that there is the Voting Rights Act that we need to meet.

[39] And if it means moving blocks of people to different districts, in a district that they - - that their vote may not be or their district may not be as competitive because we're putting more Democrats or Republicans in a district, then that's what we have to do.

I think we all agree that that -- that the Voting Rights Act is the number one thing that we need to comply with.

So these are just ideas that we're considering. We're not approving any of these. These are -- at this time.

We're asking Strategic Telemetry to make those changes and come back with a report that tells us, okay, we proposed these changes, you made those changes, so what was it -- how many of the districts that we changed but also the surrounding districts.

And I think we won't know that until they make those districts and come back with that information. And that will be, will be by tomorrow.

KENNETH STRASMA: If I may, Madam Chair, to expand on an earlier answer, if I understand correctly, Commissioner Stertz has two concerns. One that population that's moved may have an accidental and unnoticed impact. And that a separate question about you know given that impact, is it a change that we still want to make.

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[129] STATE OF ARIZONA

ss.

COUNTY OF MARICOPA

BE IT KNOWN that the foregoing proceeding was taken before me, Marty Herder, a Certified Court Reporter, CCR No. 50162, State of Arizona; that the foregoing 128 pages constitute a true and accurate transcript of all proceedings had upon the taking of said meeting, all done to the best of my skill and ability.

DATED at Chandler, Arizona, this 8th day of December, 2011.

/s/_____

C. Martin Herder, CCR
Certified Court Reporter
Certificate No. 50162